

# EXHIBIT 1

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2       IN THE UNITED STATES DISTRICT COURT  
3       FOR THE DISTRICT OF MARYLAND  
4       NORTHERN DIVISION

5  
6       IN RE: MICROSOFT LITIGATION  
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8       

9  
10      MDL 1332  
11      Friday, February 6, 2004  
12      Baltimore, Maryland

13      Before: Honorable J. Frederick Motz, Judge

14      Appearances:

15      On Behalf of Sun Microsystems:  
16       Lloyd R. Day, Jr., Esquire

17      On Behalf of Burst:  
18       Spencer Hosie, Esquire

19      On Behalf of Defendant Microsoft:  
20       David B. Tulchin, Esquire  
21       John W. Treece, Esquire

22      (NOTE: Only those who verbally participated  
23       have been listed.)

24      Reported by:  
25       Mary M. Zajac, RPR  
26       Room 3515, U.S. Courthouse  
27       101 West Lombard Street  
28       Baltimore, Maryland 21201

1 what he wants, show it to you. If you've got some problem with  
2 it ahead of time, let me know. But after you've agreed upon it,  
3 submit it to me as an order and I will order that that is what  
4 the 30(b) witness say. But Mr. Hosie should show it to you  
5 first because it could be that there's something in there that  
6 just doesn't make any sense.

7 But that would set the court order and give Mr. Hosie  
8 the protection he wants and provide you with what you need so  
9 that you can educate the witness. And that's fair, too.

10 MR. HOSIE: Thank you, Your Honor.

11 MR. TREECE: I'll only respond by saying that's fine,  
12 Your Honor. I'm worried about it simply because I look at  
13 what's happened in the past. People have responded. The notice  
14 said, tell us about the change. They explain the change.

15 THE COURT: I understand. It's in his ballpark to  
16 now, it's his responsibility to phrase it right. But do it,  
17 show it to Mr. Treece in case, to make sure that you're on the  
18 same page. Once you've got it, present it to me as an order.  
19 I'll sign it and that will give you an order rather than simply  
20 a discovery dispute.

21 MR. HOSIE: Thank you, Your Honor. The third and  
22 final motion we have on today relates to the deposition of Mr.  
23 Gates.

24 Your Honor, we don't want to depose Mr. Gates because  
25 of who he is. We want to depose him because of what he's done.

1                   Mr. Gates personally told Intel to drop its support for --

2                   THE COURT: No. No. He is, in the context of this  
3                   case, he is no Lee Iacocca. I don't remember. I think back  
4                   when I had, back when I was practicing, I think it's been a long  
5                   time ago, that was a run-of-the-mill products liability case,  
6                   wasn't it?

7                   MR. HOSIE: Very good point, Your Honor.

8                   THE COURT: And they just wanted to harass whoever it  
9                   was that Lee Iacocca was with, Chrysler, I guess. Here you say  
10                   Mr. Gates was involved. And it's perfectly clear from Judge  
11                   Jackson's, without, not being pejorative, there was personal  
12                   involvement.

13                   MR. HOSIE: Absolutely, Your Honor. And that's what  
14                   distinguishes this case from the Chrysler case. He's no Lee  
15                   Iacocca. This is not a product liability case where the  
16                   witness, Mr. Gates, will have no knowledge. These were his  
17                   policies, his directives, his e-mail.

18                   He's the one that sent the e-mail to Andy Grove with  
19                   the threat of thermonuclear war if Intel didn't drop its support  
20                   for Java. He had the meetings, the one-on-one meetings. He's  
21                   not a witness, Your Honor, he is the witness on these fronts.

22                   THE COURT: No. I understand. As long as you all  
23                   understand. We're not talking before about reopening discovery.  
24                   I don't expect you all to -- you know, Mr. Gates is a busy  
25                   executive. You're going to take into account the fact that

1 depositions were taken. You will use that. You're not going to  
2 re-invent the wheel.

3 But to the extent that you want to ask the questions  
4 yourself or to explore something the focuses more upon you, I  
5 understand, as long as you do it, you would conduct the  
6 deposition in that spirit, I assume.

7 MR. HOSIE: And we would, Your Honor. As proof of  
8 that pudding, we offered at the outset to limit it to no more  
9 than four hours, just precisely to address that kind of burden.  
10 Thank you.

11 THE COURT: But again, that deposition clearly should  
12 be -- not necessarily. If that's all you want from Mr. Gates,  
13 I'll hear from Mr. Treece, that could go forward immediately.  
14 But it might make sense, again, to wait until the Fourth Circuit  
15 has ruled on the collateral estoppel in case there's something  
16 else you might want to ask.

17 MR. HOSIE: I think it does make sense to wait, Your  
18 Honor. One other point of clarification.

19 In our papers we had ask that Sun be exempted from the  
20 requirement of participating in this deposition. Our case is on  
21 a much different discovery track than the Sun case. We have  
22 different issues. I believe in our teleconference a week or so  
23 ago Mr. Treece agreed with that.

24 But I would like to clarify with the Court that when  
25 this deposition goes forward, it's just Burst and not Sun.

1 THE COURT: Mr. Treece.

2 MR. TREECE: I see I'm already in an uphill here, Your  
3 Honor.

4 THE COURT: I think you are.

5 MR. TREECE: Give it a shot. Because there are a  
6 couple, let me tell you what's happening.

11 Now the fact is, however, that it had earlier, Burst  
12 had earlier in its pleadings identified ten Microsoft employees  
13 that it said had knowledge of the Intel Java issue. Documents  
14 cited in our discovery responses identified still more. And  
15 testimony and exhibits in the government case identified still  
16 more.

17                   So we can easily identify about 47 employees as having  
18                   knowledge about the Intel/Microsoft relationship. Now, not all  
19                   of them, of course, have this intimate, as intimate familiarity  
20                   as others on the list. The list includes individuals like Mr.  
21                   Allchin, whose deposition was going to go forward today,  
22                   Engstrom, and several others, that Burst itself in its motion  
23                   identifies as having a very close relationship to this issue.

24 So we pointed all that out in our brief, Your Honor.  
25 We also pointed out that Burst had not taken any depositions of

1 Intel employees.

2 Now, that's critical because, unlike the government  
3 case, a showing of impact is an essential element to  
4 establishing liability in a private antitrust action. So if, in  
5 fact, Intel stopped investing in the Java media framework  
6 player, I'll get to this in a second, but player for its own  
7 independent reasons, the entire claim falls to the side because  
8 there is no showing of impact. And yet Burst, at the time they  
9 noticed, they asked for Mr. Gates's deposition, had not taken  
10 any Intel depositions.

11 So Your Honor, we argued in our response brief that  
12 under the case law it was inappropriate for Burst to seek Mr.  
13 Gates's deposition when it had not exhausted other less  
14 intrusive discovery into the issues about which they want to  
15 question him.

16 Now, events subsequent to our brief have, in our view,  
17 validated our point. We submitted our brief on December 11th.  
18 The next week Burst subpoenaed Intel to ask exactly the  
19 questions that we said they should ask. That deposition has not  
20 gone forward but this, the date is being negotiated.

21 Then on December 30th, Burst sent us a wish list for  
22 further deponents. And it included seven individuals that we  
23 had pointed out have knowledge, in our brief, that have  
24 knowledge about the Intel issue.

25 Finally, I will point out that Burst has not yet taken

1       Mr. Allchin's deposition who Burst itself in its motion, Page 13  
2       and other places, says was intimately involved in the  
3       relationship with Intel.

4                   So in our view the subsequent events have shown the  
5       truth to the argument, that it is at best premature to allow  
6       deposition of Mr. Gates because Burst has not exhausted less  
7       intrusive discovery.

8                   Finally, Judge, there's another response to Mr.  
9       Hosie's focus on the Grove/Gates discussions that were also part  
10      of the government case or focus of the government case. You  
11      will recall that the Court of Appeals in the government case  
12      found that Microsoft had pressured Intel in 1996 and that it,  
13      quote, "Intel finally capitulated in 1997." That's 253 F.3d at  
14      373.

15                  And that finding was a distillation of the plaintiffs'  
16      proposed findings in the government case that were more  
17      specific. The plaintiffs had offered proposed findings saying  
18      that Intel had capitulated in the spring of 1997. That,  
19      however, is not what Burst's story is all about.

20                  Burst says, and the public record shows, that Intel  
21      announced in mid-1998 that it was withdrawing support for the  
22      Java media player and that it would continue to provide support  
23      for the player well into 1999. And we know from the record that  
24      between 1997 and mid, and the mid-1998 announcement, Intel  
25      continued to invest in the Java media framework player because

1       it released two Beta versions during that time and it continued  
2       to provide customer support until April of 2000.

3                   So whatever role the Gates to Grove communications had  
4       in the government case, it's not at all clear that they are  
5       relevant to Burst allegations which involve a different time  
6       period. Instead, the relevant time period that Mr. Hosie's  
7       client is worried about would focus on the 1997 to 1998 period,  
8       after the end of the government's story.

9                   And Burst has made no showing at all that Mr. Gates  
10      has unique knowledge about that time period. To the contrary,  
11      the e-mails that lead into that period are from others at the  
12      company, Mr. Engstrom, Mr. Allchin.

13                  So in short, while Burst may want to ride the  
14      coattails of the government case here, the facts don't fit. And  
15      the facts don't suggest that Mr. Gates has unique knowledge  
16      relevant to Burst allegations. So as a result, we suggest that  
17      Burst's request to take Mr. Gates's deposition is at best  
18      premature under the case law because it needs to show that Mr.  
19      Gates has unique knowledge about facts that are relevant to  
20      Burst.

21                  THE COURT: Mr. Hosie.

22                  MR. HOSIE: Very briefly, Your Honor. There's no  
23      small irony in Microsoft arguing the factual merits on a motion  
24      where it's denying us discovery. And that's what you just  
25      heard.

1                   THE COURT: Well, it's a little more sophisticated  
2 than that. But given the fact that it's a discovery dispute, I  
3 think it comes down pretty close to that.

4                   In fact, it may very well be the way this plays out,  
5 you will have taken some of the other depositions first.

6                   Frankly, even if the Intel deposition, somebody denied that they  
7 capitulated, I'm not sure that that means that you couldn't take  
8 people from the Microsoft side because you don't always have to  
9 believe, even if same people, two sides of the story, say the  
10 same thing if objective evidence disproves it.

11                  The bottom line is, you could very well be, Mr.  
12 Treece, if you distinguish between the timeframes and things,  
13 this could become important at a summary judgment stage or  
14 something. I don't think I can parse it that thin on a  
15 discovery dispute. And as long as, it will relate only to Sun.  
16 It will be limited in time to four hours, which even on Mr.  
17 Gates's schedule, that's a reasonable amount of time. And that  
18 will, and the time limit will be disciplining.

19                  MR. DAY: Your Honor, you mentioned it would relate  
20 only to Sun.

21                  THE COURT: Excuse me. Relate only to Burst.

22                  MR. TREECE: Actually, I was going to offer a split.  
23 We did say that this would be limited to Burst and Sun has its  
24 own issues, yes or no, for later. Let me, however, address the  
25 four hour limitation.

1           If you recall the original offer by Mr. Hosie was four  
2           hours of Mr. Gates's time to address three topics. This was one  
3           of them. The first, the second was the structure in terms of  
4           licensing agreements. And in our opposition brief I think we  
5           showed that he has no unique knowledge in this area. Other  
6           employees are in an undeniably better position to talk about  
7           licensing terms. In fact, none of the documents that Burst  
8           cited in its brief about licensing issues even had Mr. Gates  
9           name on it.

10           So therefore, it's clear to us, maybe --

11           THE COURT: You want an hour, four divided by three?

12           MR. TREECE: I understand the novel issue are the  
13           same. But I do think that some time is allocated to that issue.  
14           And the next issue had to do, they said in the motion they  
15           wanted to take his deposition to see what he thought about  
16           Windows Media Series Nine as a technological innovation. Now,  
17           that would only be pertinent arguably, presumably, to support  
18           the patent infringement and trade secret claims.

19           We showed in our opposition brief that patent  
20           infringement claim and trade secret claims are resolved by  
21           detailed analysis of claim construction.

22           THE COURT: Can we reduce it to two and a half or  
23           three, subject to the collateral estoppel ruling?

24           MR. HOSIE: Certainly, as a matter of compromise, I'd  
25           be happy to live with three. I would say, Your Honor, that we

1 focused in our argument today on the Intel story. But in our  
2 brief, we point out other areas where Mr. Gates had direct  
3 direct --

4 THE COURT: Mr. Treece in five minutes just earned an  
5 hour.

6 MR. HOSIE: He did.

7 THE COURT: Good job.

8 MR. HOSIE: Thank you, Your Honor.

9 THE COURT: It will be three hours unless something --  
10 and this will be subject to the collateral estoppel ruling and  
11 what happens there. It could be that this deposition's going to  
12 be postponed until we go through, it's entirely up to Mr. Hosie.  
13 But it could be, depending on what the Fourth Circuit does, the  
14 briefing on the collateral estoppel issues, because it could be  
15 that more questions have to be asked. And then the three hours  
16 will go up. Thank you very much.

17 The only other thing I wanted to mention was,  
18 implicitly, I also am going to talk to -- I was saying if I was  
19 Judge Whyte I'd want to rule on the summary judgment. I'm going  
20 to call Judge Whyte and find out what he wants. So all of this  
21 is subject to my talking to him.

22 (Conclusion of Proceedings.)

23

24

25

REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of In Re: Microsoft Litigation, Case Number(s) MDL 1332, on February 6, 2004.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my  
signature this 9th day of February, 2004.

Mary M. Zajac  
Mary M. Zajac,  
Official Court Reporter

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# EXHIBIT 2

BILL GATES ; August 26, 2004

Page 1

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MARYLAND

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4  
5    IN RE MICROSOFT CORP.                   )  
6    ANTITRUST LITIGATION.                    )  
7    )  
8    this Document relates to:                )  
9    Burst.com, Inc. Vs.                      )  
10   Microsoft Corp.,                         )  
11    )  
12    Civil Action No. JPM-02-cv-2952        )

13  
14                   VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION  
15                   OF  
16                   BILL GATES  
17                   HIGHLY CONFIDENTIAL

18  
19  
20                   1:11 P.M.  
21                   AUGUST 26, 2004  
22                   ONE MICROSOFT WAY, BUILDING 34  
23                   REDMOND, WASHINGTON  
24  
25    REPORTED BY: Diane M. Mills, CCR No. 2399



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2 SPENCER HOSIE		1 EXHIBITS FOR IDENTIFICATION CONTD	
3 BRUCE WECKER		2 16 MS-CC-Bu 368895-896	83
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17 Associate General Counsel		16	
18 Microsoft Corporation		17	
19 One Microsoft Way		18	
20 Redmond, Washington 98052-6399		19	
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2 MR. HOSIE	6		
3 VIDEOTAPE NO. 1	5	1 REDMOND, WASHINGTON; AUGUST 26, 2004	
4 VIDEOTAPE NO. 2	75	2 1:11 P.M.	
5		3 --oo--	
6 EXHIBITS FOR IDENTIFICATION	PAGE	4	
7 1 MS98 0108939-940	8	5 VIDEO OPERATOR: Today is August 26, 2004. The	
8 2 MS-CCPMDL 292303-315	10	6 time on the monitor is now 1:11 p.m. This is Volume No. 1,	
9 3 MS-CCPMDL 221232-239	22	7 Tape No. 1, in the deposition of Bill Gates, in the United	
10 4 None marked	NA	8 States District Court for the District of Maryland in the	
11 5 MS-CC-Bu 368501-503	33	9 matter of Burst.com, Incorporated versus Microsoft	
12 6 MS-CC-Bu 372449-453	37	10 Corporation, Civil Action No. JFM-02-CV-2952. We are at the	
13 7 MS-CC-Bu 368260	47	11 offices of Microsoft Corporation, the address is One	
14 8 MS-CC-Sun 520903-904	52	12 Microsoft Way in Redmond, Washington. Today's deposition was	
15 9 MS98 168290-291	60	13 noticed by the attorney Spencer Hosie.	
16 10 MS-CC-Bu 368506	65	14 My name is Peter A. Koslik, I'm employed by Royal	
17 11 MS-CC-Bu 203557-559	68	15 Video Productions, Incorporated, whose principal place of	
18 12 MS-CC-Bu 203561-564	71	16 business is 950 Northwest Firwood Boulevard, Issaquah,	
19 13 MS8 6449-451	74	17 Washington, 98027. The phone number there is 425-391-6809.	
20 14 MSS 5054775-776	75	18 Today's court reporter is Diane Mills of Yamaguchi, Obien &	
21 15 None marked	NA	19 Mangio.	
22		20 At this time I would like to ask all persons except	
23		21 for the witness and the court reporter to introduce	
24		22 themselves for the record. Please state your name, the firm	
25		23 you're working for, and whom you're representing in this	
		24 matter, starting from my right, please.	
		25 MR. HOSIE: Good afternoon. My name is Spencer	

2 (Pages 2 to 5)

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<p>1 Hosie, I represent the Plaintiff in this case, Burst.  2 MR. WECKER: Bruce Wecker, also for the Plaintiff.  3 MR. DOUGLAS: Charles Douglas representing  4 Microsoft.  5 MR. TREECE: John Treece also representing  6 Microsoft.  7 MR. BURT: Tom Burt representing Microsoft.  8 MR. CULBERT: Andrew Culbert representing  9 Microsoft.  10 VIDEO OPERATOR: Would the court reporter please  11 swear in the witness.</p> <p>12</p> <p>13 BILL GATES,  14 sworn as a witness by the Notary Public,  15 testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. HOSIE:</p> <p>18 Q. Good afternoon, Mr. Gates. We have not met prior  19 to today, have we, sir?  20 A. I don't believe so.  21 Q. You appreciate you have been placed under oath,  22 sir?  23 A. I just did.</p>	<p>Page 6</p> <p>1 back to 1997. Was it true, sir, that in 1997 you viewed Java  2 as the biggest threat facing Microsoft?  3 MR. DOUGLAS: Objection to the form. Vague and  4 ambiguous.  5 A. I wouldn't say that you can take the Java – the  6 term Java and say that just that by itself represented any  7 type of unified threat. There were a lot of things that Sun  8 was doing around Java, other people were doing around Java,  9 some browser things that were going on that did represent  10 important competitive activity.  11 Q. (BY MR. HOSIE) My question, sir, was a little  12 different and I'll put again.  13 Is it not true, Mr. Gates, that in 1997 you  14 personally viewed Java as the biggest threat facing  15 Microsoft?  16 MR. DOUGLAS: Same objection.  17 A. You'll have to give me the context.  18 Q. (BY MR. HOSIE) Let me do that, sir. Let the  19 record reflect I'm showing the witness what has been marked  20 as Exhibit 1. Counsel, copy for you.  21 (Deposition Exhibit No. 1 was marked  22 for identification.)  23 Q. (BY MR. HOSIE) Mr. Gates, I've marked as Exhibit 1  24 an e-mail thread or string, depending on your nomenclature.  25 I'm going to direct your attention to an e-mail from you on</p>
<p>1 Q. And you understand you have an obligation to  2 testify as fully and truthfully as possible?  3 A. Sure.  4 Q. Do you understand, sir, that if you actually have a  5 recollection or a memory of an event, to say "I don't recall"  6 would be untrue?  7 A. That sounds right.  8 Q. All right, sir. Are you represented by counsel  9 here today?  10 A. Yes.  11 Q. Who is your lawyer, please?  12 A. I'm represented by Microsoft counsel.  13 Q. And that would be Mr. Chuck Douglas sitting to your  14 immediate right?  15 A. He's one lawyer who's here today.  16 Q. I see four Microsoft lawyers sitting across from me  17 at the table, sir. Are they all counsel for you?  18 A. From a layman's point of view I'd say yes. Perhaps  19 there's some legal aspect of being somebody's counsel I'm not  20 appreciating that maybe they should comment on if you're  21 curious.  22 MR. DOUGLAS: Mr. Gates, we all represent the  23 company and, therefore, you.  24 THE WITNESS: Okay.  25 Q. (BY MR. HOSIE) Mr. Gates, let me turn the clock</p>	<p>Page 7</p> <p>1 the bottom third of the first page, dated Friday, November 7,  2 1997, 10:53 a.m. I'll give you a moment to read that, sir.  3 A. You're talking about Ben Waldman's mail?  4 Q. The one from Bill Gates to Ben Waldman in the  5 bottom third of the page. Do you see that, Mr. Gates?  6 A. Right.  7 Q. This is an e-mail you wrote?  8 A. Yes.  9 Q. You wrote this on or about November 7, 1997?  10 A. It appears, yes.  11 Q. And you sent it to Mr. Waldman?  12 A. That's right.  13 Q. Mr. Waldman worked at Microsoft, did he not, sir?  14 A. At the time, yes.  15 Q. And you wrote this e-mail in a fingers-to-keyboard  16 sense?  17 A. I'm sorry?  18 Q. You wrote this e-mail in a fingers-to-keyboard  19 sense? I mean, this is your --  20 A. I have no idea what that means.  21 Q. Did you write this e-mail, sir?  22 A. I typed it, yes.  23 Q. That was my question. And do you not say in this  24 e-mail, and I quote, "Java is the biggest threat to us ..."?  25 A. This is about a very specific thing with Apple, and</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">Page 10</p> <p>1 I say relative to that, I view Java as the biggest threat.  2 Q. To Microsoft?  3 A. Relative to the issues we were discussing about  4 Apple here.  5 Q. Okay. Who is the "us" you were referencing in this  6 sentence, sir?  7 A. Microsoft.  8 Q. Now, was it the Java runtime that gave you  9 heartburn, sir?  10 MR. DOUGLAS: Objection to the form.  11 A. What's the context? I don't think we've talked  12 about anything that would help me answer that.  13 Q. (BY MR. HOSIE) Why don't we mark another exhibit,  14 then.  15 (Deposition Exhibit No. 2 was marked  16 for identification.)  17 Q. (BY MR. HOSIE) Mr. Gates, before I show you what  18 I've marked as Exhibit 2, let me ask this. I suspect you had  19 a chance to meet with your lawyers to prepare yourself to  20 testify here today?  21 A. I met with them yesterday.  22 Q. And with whom did you meet, sir?  23 A. With the gentlemen here today.  24 Q. All four counsel?  25 A. They were there, and I think maybe one other person</p>	<p style="text-align: right;">Page 12</p> <p>1 following question yes or no. Do you actually remember the  2 specific identity of any of those nine documents? You may  3 answer that yes or no.  4 MR. DOUGLAS: You can answer that question.  5 A. I remember things about what I was shown. They're  6 not titled documents, they're e-mails.  7 Q. (BY MR. HOSIE) Were all nine e-mails, sir?  8 A. One wasn't.  9 Q. Was one a presentation deck?  10 MR. DOUGLAS: Objection. You're asking the witness  11 now to describe what he was shown, and I instruct the witness  12 not to answer.  13 Q. (BY MR. HOSIE) Did reviewing these nine documents  14 help refresh your recollection to any extent, Mr. Gates?  15 A. To some extent, yes.  16 Q. Because they related to events some years in the  17 past now; correct?  18 A. That's correct.  19 Q. And it was helpful for you in trying to recall what  20 had happened to review the paper record of the time; fair?  21 A. I was receiving advice from counsel.  22 MR. HOSIE: Are you standing with your  23 instructions, Counsel?  24 MR. DOUGLAS: Absolutely.  25 Q. (BY MR. HOSIE) I'll show you what has been marked</p>
<p style="text-align: right;">Page 11</p> <p>1 was there.  2 Q. Who was the other person, if you recall?  3 A. Maybe they can help me.  4 MR. DOUGLAS: Mr. Cederoth.  5 Q. (BY MR. HOSIE) Thank you. And how many hours did  6 this preparation session last?  7 A. A few hours.  8 Q. Two, three, five?  9 A. I think close to three.  10 Q. Three hours. And did the Microsoft lawyers show  11 you any documents during this session?  12 A. Yeah, they did show me some.  13 Q. And do you recall the approximate number of  14 documents they showed you?  15 A. Maybe nine.  16 Q. And do you recall any of the specific nine?  17 MR. DOUGLAS: Well —  18 A. What do you mean by that?  19 Q. (BY MR. HOSIE) Can you tell me what they were?  20 A. No.  21 MR. DOUGLAS: And I object to that question. If  22 you're asking him to describe what was shown to him by  23 counsel in a privileged meeting, that violates the privilege  24 and I would instruct the witness not to answer that question.  25 Q. (BY MR. HOSIE) Sir, I'd like you to answer the</p>	<p style="text-align: right;">Page 13</p> <p>1 as Exhibit 2, sir. Counsel, copy for you. Gentlemen, I  2 apologize for only bringing several copies. I didn't realize  3 this would be quite as fully attended as it in fact is.  4 Mr. Gates, I'd ask you to look at the first page to  5 familiarize yourself with this document and then I will ask  6 you about the first and second pages attached.  7 A. (Witness reviewing document.) Yeah, go ahead.  8 Q. Do you recognize this document, sir?  9 A. No.  10 Q. Was this one of the ones shown to you yesterday?  11 A. No.  12 Q. The cover page of the document is an e-mail from  13 Paul Maritz to you, Allchin and others, dated January 5,  14 1997. Do you see that, sir?  15 A. Uh-huh.  16 Q. And I'm sorry, you have to answer aloud, a yes or a  17 no, please.  18 A. Uh-huh is not good enough? I mean, it was aloud,  19 but okay, yes, yes.  20 Q. How about with words? Thank you.  21 MR. DOUGLAS: Something that the court reporter can  22 transcribe.  23 A. All right. H-m-m-m.  24 Q. (BY MR. HOSIE) This e-mail references a draft  25 series of slides for Billg to use on Monday p.m.</p>

4 (Pages 10 to 13)

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<p>1 You would be the Billg, sir?</p> <p>2 A. Yes.</p> <p>3 Q. That's your e-mail moniker or alias, as it were?</p> <p>4 A. It used to be when you used e-mail shorthand like</p> <p>5 that, that's right.</p> <p>6 Q. Okay, fair enough. And you've had a chance to look</p> <p>7 at the first couple pages of the attachment, sir?</p> <p>8 A. Yes.</p> <p>9 Q. And you recognize these slides, sir?</p> <p>10 A. No.</p> <p>11 Q. Do you recall attending a meeting in early 1997</p> <p>12 dealing with the NC and Java challenge?</p> <p>13 A. I'm sure there were meetings that touched on that</p> <p>14 topic.</p> <p>15 Q. NC, sir, is an acronym for network computer or</p> <p>16 network computing?</p> <p>17 A. Computer, in most cases.</p> <p>18 Q. In your vernacular it would be network computer?</p> <p>19 A. Well, it's a term – it can be used for other</p> <p>20 things also, but it's often network computer.</p> <p>21 Q. Fair enough. Turning to the second page, sir, this</p> <p>22 references a key platform challenge. And the note says, "NC</p> <p>23 and Java are platform challenges."</p> <p>24 In 1997, Mr. Gates, did you personally view NC and</p> <p>25 Java as presenting platform challenges to Microsoft?</p>	<p>Page 14</p> <p>1 A. There are aspects of it that we were involved in</p> <p>2 and that were part of our strategy and there are aspects that</p> <p>3 weren't.</p> <p>4 Q. (BY MR. HOSIE) Is this a question you can't</p> <p>5 answer, sir?</p> <p>6 A. I've answered it. A yes would be wrong because</p> <p>7 certainly it was part of our strategy to do some things in</p> <p>8 those areas, and a no would be wrong because there's</p> <p>9 absolutely a lot of activity on the part of competitors in</p> <p>10 those areas that, you know, offered alternatives to our</p> <p>11 products.</p> <p>12 Q. Sir, thank you, but you are answering a question</p> <p>13 that I did not ask and I will ask my question again.</p> <p>14 A. Okay.</p> <p>15 Q. Are you ready? Here it is.</p> <p>16 MR. DOUGLAS: Well, Mr. Hosie, object to the</p> <p>17 preamble. If you want to ask a question just ask it, but,</p> <p>18 you know, that's purely argumentative and that's not going to</p> <p>19 be productive.</p> <p>20 MR. HOSIE: I don't mean to argue with this</p> <p>21 witness. I would like an answer to my question, though.</p> <p>22 MR. DOUGLAS: Well, you are, and just ask the</p> <p>23 question in a professional manner.</p> <p>24 Q. (BY MR. HOSIE) Sir, here's my question. Did you</p> <p>25 personally view NC and Java as presenting platform challenges</p>
<p>1 MR. DOUGLAS: Objection to the form. Vague and</p> <p>2 ambiguous.</p> <p>3 A. We were doing activities with Java, other people</p> <p>4 were doing activities with Java, and some of those were</p> <p>5 people we were competing with.</p> <p>6 Q. (BY MR. HOSIE) My question, sir, was a little</p> <p>7 different and I'll ask it again.</p> <p>8 In 1997, did you personally, Mr. Bill Gates, view</p> <p>9 NC and Java as presenting platform challenges to Microsoft?</p> <p>10 MR. DOUGLAS: Same objection.</p> <p>11 A. There were things about NCs and Java we chose to</p> <p>12 embrace and offer and there were things we didn't choose to</p> <p>13 embrace that competitors did embrace. So they were part of</p> <p>14 the competitive framework.</p> <p>15 Q. (BY MR. HOSIE) With all due respect, sir, I don't</p> <p>16 think you've answered my question and I'll ask it a third</p> <p>17 time.</p> <p>18 Did you personally in 1997 view NC and Java as</p> <p>19 presenting Microsoft with platform challenges? I think</p> <p>20 that's a yes or a no.</p> <p>21 MR. DOUGLAS: Same objection. And, Mr. Gates, you</p> <p>22 do not necessarily have to answer a question yes or no if it</p> <p>23 can't be answered yes or no. And if the answer is the same</p> <p>24 as you gave him before, that's perfectly fine as well. But</p> <p>25 if you'd like to have the question read back –</p>	<p>Page 15</p> <p>1 to Microsoft in 1997?</p> <p>2 MR. DOUGLAS: And I have the same objection. Vague</p> <p>3 and overbroad.</p> <p>4 A. They weren't purely challenges, but there are</p> <p>5 aspects of things that people were doing with them that were</p> <p>6 challenges.</p> <p>7 Q. (BY MR. HOSIE) Challenges to your platform?</p> <p>8 A. To various of our products.</p> <p>9 Q. What aspects of what others were doing did you view</p> <p>10 as presenting platform challenges to Microsoft?</p> <p>11 A. They were creating competitive products using those</p> <p>12 approaches.</p> <p>13 Q. This slide goes on to note of a "possible emergence</p> <p>14 of a set of APIs and underlying system software that lead to</p> <p>15 lesser or no role for Windows."</p> <p>16 Have I read that correctly, Mr. Gates?</p> <p>17 A. You're just asking me about your reading?</p> <p>18 Q. Right now that's correct.</p> <p>19 A. Okay, let's take a look.</p> <p>20 Q. I think literally I'd like first to get you on the</p> <p>21 same page.</p> <p>22 A. Yeah, that'll help.</p> <p>23 Q. That'll help.</p> <p>24 A. What page are you talking about?</p> <p>25 Q. I'm on Page 2, sir. The title is Key Platform</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1 Challenge, and you see the language "NC and Java are platform 2 challenges"?</p> <p>3 A. Right.</p> <p>4 Q. The question we just went around and around on; 5 correct?</p> <p>6 A. No.</p> <p>7 Q. All right. And then I read into the record the 8 next bullet point paragraph, and I'll do so again. Open 9 quote, "possible emergence of a set of APIs and underlying 10 system software that lead to lesser or no role for Windows." 11 Have I read that correctly, sir?</p> <p>12 A. Uh-huh.</p> <p>13 Q. All right. I think that was a yes?</p> <p>14 A. You read that correctly.</p> <p>15 Q. Thank you. Now, what does that language mean to 16 you, Mr. Gates, "possible emergence of a set of APIs and 17 underlying system software that lead to lesser or no role for 18 Windows"?</p> <p>19 MR. DOUGLAS: Objection. Form and foundation.</p> <p>20 A. It suggests exactly what it says, that somebody can 21 build an operating system that's not Windows. And there were 22 people doing that, as there have been at all times.</p> <p>23 Q. (BY MR. HOSIE) And that would not be a good thing 24 for Microsoft; correct?</p> <p>25 A. No, there's always been people doing other</p>	<p>1 powerful PCs that use latest chips and therefore could let 2 you, for example, see streaming video.</p> <p>3 Q. Were you concerned that the marriage, if you will, 4 of Java and network computing might lead to the emergence of 5 a series of thin client computers not dependent on the 6 Microsoft OS?</p> <p>7 MR. DOUGLAS: Objection to the form.</p> <p>8 A. As I've said, there's always been competitive 9 operating systems that use Java to some degree. A thin 10 device doesn't run anything. That's why it's called thin, is 11 it doesn't have multimedia capabilities, rich things on it. 12 So when you get down to the thin end, there's essentially no 13 runtime there at all, it's all been abstracted away.</p> <p>14 So in your question there's two distinct things 15 that aren't the same. There's the idea of a super thin 16 device, which we participated in that, we didn't happen to 17 call ours a network computer. In fact, we were a very 18 significant market participant in doing those thin devices.</p> <p>19 Q. (BY MR. HOSIE) Hydra?</p> <p>20 A. No, Windows Terminal Server. Hydra is a code name 21 that we've used around here many times, and I don't -- no 22 shipping product has ever been called Hydra. Many projects 23 under development were called Hydra. I don't know if Windows 24 Terminal Server was one of those, but Windows Terminal Server 25 is the product name we used for our thin computing offering.</p>
<p style="text-align: right;">Page 19</p> <p>1 operating systems.</p> <p>2 Q. Well --</p> <p>3 A. It's competition.</p> <p>4 Q. Sure. And since there's always been to some modest 5 extent other operating systems, why in 1997 was Microsoft or 6 were you personally concerned about NC and Java presenting 7 platform challenges?</p> <p>8 MR. DOUGLAS: Objection to the form. Vague, 9 ambiguous and overbroad.</p> <p>10 Q. (BY MR. HOSIE) In short, Mr. Gates, what was 11 different about NC and Java?</p> <p>12 MR. DOUGLAS: Same objection.</p> <p>13 A. Different from what?</p> <p>14 Q. (BY MR. HOSIE) From, say, an Apple operating 15 system.</p> <p>16 A. Well, you just showed me a piece of mail that was 17 talking about Apple's Java strategy.</p> <p>18 Q. Yeah.</p> <p>19 A. There's no distinction. Apple, like many operating 20 system people, they adopted a strategy with respect to Java, 21 so did Microsoft, so did Sun, so did Netscape. Likewise, 22 anybody building hardware platforms was going to decide how 23 much they embraced the idea of very limited computers. For 24 example, it couldn't do multimedia, couldn't do like 25 streaming video, like low end network computers or more</p>	<p>1 And so it doesn't run Java or a competitor or anything on it 2 because it's purely thin.</p> <p>3 Q. My question, Mr. Gates, is, were you concerned 4 about the marriage of Java and network computing leading to 5 the emergence of a paradigm that would give Microsoft's OS 6 little or no role?</p> <p>7 MR. DOUGLAS: Objection to the form. Vague and 8 ambiguous.</p> <p>9 A. Java and network computers are two distinct things. 10 There were aspects of Java that our competitors were adopting 11 that created competition that had nothing to do with network 12 computers. And in most cases network computers had very, 13 very little to do with Java.</p> <p>14 Q. (BY MR. HOSIE) So are you saying that you were not 15 concerned about the emergence of network computers running 16 some sort of Java runtime as presenting a threat to you at 17 Microsoft?</p> <p>18 A. Now, you're talking about the marriage of two 19 things that are basically separate. We were concerned about 20 what competitors were doing with Java, we were concerned 21 about what competitors were doing with network computers, but 22 by and large, those are two separate things. If you put them 23 together, it's actually not really a network computer, it's 24 kind of a halfway, you know, kind of a medium fat thing. 25 (Deposition Exhibit No. 3 was marked)</p>

6 (Pages 18 to 21)

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1 for identification.)  
 2 Q. (BY MR. HOSIE) Let me show you what I've marked as  
 3 Exhibit 3, sir. For the record, I've marked as our next in  
 4 order Exhibit 3 an April 22, 1997 memo from Jeff Raikes to  
 5 Bill Gates and Steve Ballmer.  
 6 A. That's not correct. It's copied to Bill Gates and  
 7 Steve Ballmer.  
 8 Q. Thank you, it is. And --  
 9 A. It's to WWSMM.  
 10 Q. And what's the WWSMM acronym stand for?  
 11 A. Worldwide sales and marketing meeting. It's a  
 12 bunch of people.  
 13 Q. It's an e-mail alias?  
 14 A. It's the set of people who came to a meeting. I  
 15 don't think it's an e-mail alias, but it's a fairly sizeable  
 16 group of people who came to an annual meeting called the  
 17 worldwide sales and marketing meeting.  
 18 Q. And you, as you noted, were a carbon copy recipient  
 19 of this?  
 20 A. That's what it shows.  
 21 Q. As is Mr. Ballmer?  
 22 A. Right.  
 23 Q. And it would have been your practice to read this  
 24 upon receipt, sir?  
 25 A. Not everything I'm copied on do I read, no.

Page 23

Page 25

1 Q. Did you recall reading this, sir?  
 2 A. No.  
 3 Q. Is it your expectation given the nature of this  
 4 document that you would have read it when you received it?  
 5 A. Let's see how long it is. I think there's a good  
 6 chance I didn't read all of this.  
 7 Q. Do you think you read parts of it?  
 8 A. I don't know.  
 9 Q. You just can't recall?  
 10 A. That's right.  
 11 Q. All right, if you could turn to the second page,  
 12 sir. Actually, let me start on the first page. If you could  
 13 read to yourself the first and second sentence of the second  
 14 paragraph in the introduction.  
 15 A. The first and second sentence of which paragraph?  
 16 Q. The second paragraph, Mr. Gates.  
 17 MR. DOUGLAS: The one starting with "But  
 18 major ..."?  
 19 MR. HOSIE: Indeed.  
 20 A. Okay. (Witness reading document.) Okay, I read  
 21 the whole paragraph.  
 22 Q. (BY MR. HOSIE) This paragraph talks about network  
 23 computer, does it not?  
 24 A. It mentions many competitive activities, I think  
 25 it's eleven.

1 Q. And one of them is the network computer, is it not,  
 2 sir?  
 3 A. That's correct.  
 4 Q. And another is the Java operating environment?  
 5 A. That's another one.  
 6 Q. And Mr. Raikes -- am I pronouncing his name  
 7 correctly?  
 8 A. Yes.  
 9 Q. Mr. Raikes observes that, and I'll quote for the  
 10 record, "The Network Computer (NC) and the Java operating  
 11 environment - led by Sun, Oracle, IBM, and Netscape - is  
 12 making a big push to displace Windows."  
 13 Was that your personal view, sir, in 1997?  
 14 MR. DOUGLAS: Objection to the form and foundation.  
 15 A. There were a lot of competitive activities by those  
 16 people, some of which involved using Java, some of which did  
 17 not involve using Java. Those were amongst our major  
 18 competitors.  
 19 Q. (BY MR. HOSIE) But my question, sir, was a little  
 20 different and I'll ask it again.  
 21 Did you personally feel that network computer and  
 22 the Java operating environment were making a big push to  
 23 displace Windows in 1997?  
 24 MR. DOUGLAS: Same objection.  
 25 A. The people making a big push are the competitors.

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<p>Page 26</p> <p>1 I'd say.</p> <p>2 Q. Okay, sir. Why don't we turn to the next page and 3 perhaps we'll have more success with this language.</p> <p>4 Do you see a paragraph called Selling the Platform?</p> <p>5 A. I do.</p> <p>6 Q. Before I ask you questions about this, Mr. Gates, 7 I'd like you to take a moment and read it to yourself.</p> <p>8 MR. DOUGLAS: All three paragraphs?</p> <p>9 MR. HOSIE: No, just the first paragraph under 10 Selling the Platform.</p> <p>11 A. (Witness reading document.) Okay.</p> <p>12 Q. (BY MR. HOSIE) Mr. Raikes begins by saying, and 13 I'll quote for the record, open quote, "Windows is facing its 14 biggest competitive threat since inception."</p> <p>15 Have I read that correctly?</p> <p>16 A. Uh-huh, yes.</p> <p>17 Q. And -- thank you. And was that how you personally 18 felt in 1997, sir, that Windows was facing its biggest 19 competitive threat since inception?</p> <p>20 A. No.</p> <p>21 Q. So this is a statement of Mr. Raikes that you would 22 actually in fact disagree with?</p> <p>23 A. I think it's fairly classic Microsoft hyperbole to 24 say in every year we're in business, this is the year we're 25 facing the greatest competitive challenge. And I bet you I</p>	<p>Page 28</p> <p>1 A. No.</p> <p>2 Q. Well, Mr. Gates, let me go on to the next sentence 3 and I'll read it for the record. "If the NC is successful, 4 it will mean a catastrophic downside in Windows revenue, our 5 server business, our tools business, and our applications 6 business - i.e. NCs threaten the heart and body of our 7 company."</p> <p>8 Sir, did you agree that network computers 9 threatened the heart and body of Microsoft as of 1997?</p> <p>10 A. Not the network computers that we created which 11 were the Windows Terminal Server ones, but if people weren't 12 buying Microsoft-related software, that is, if they bought an 13 NC that had no relationship to Windows whatsoever, that could 14 displace all the things that Mr. Raikes enumerates.</p> <p>15 Q. So -- sure. So, for instance, if NCs running Navio 16 became the standard --</p> <p>17 A. What is Navio?</p> <p>18 Q. Does that ring a bell, sir, N-a-v-i-o, an operating 19 runtime --</p> <p>20 A. What is Navio?</p> <p>21 Q. Do you recall at all? I take it not.</p> <p>22 A. No.</p> <p>23 Q. What runtimes do you recall that weren't Microsoft 24 based for NCs as of 1997? Give me some names if you can 25 recall some.</p>
<p>Page 27</p> <p>1 could find a dozen memos a month that speak that way. I'd 2 say that OS/2 was actually the greatest competitive threat to 3 Windows since its inception, but by the time this memo was 4 written, IBM had done a fairly poor job with OS/2.</p> <p>5 Q. People had forgotten about the OS/2 scare, if you 6 will?</p> <p>7 A. It was more than a --</p> <p>8 MR. DOUGLAS: Objection to the form.</p> <p>9 Q. (BY MR. HOSIE) More than a scare?</p> <p>10 A. That's not a good characterization. It wasn't just 11 a scare, it was actually a product shipped by the largest 12 company in the computer industry called OS/2.</p> <p>13 Q. Fair enough. Would you agree with Mr. Raikes at 14 least to the extent of saying that NC and Java presented a 15 big competitive threat in 1997?</p> <p>16 MR. DOUGLAS: Well, objection to the form of that, 17 plus foundation.</p> <p>18 A. No, I'd say they were competitors doing a lot of 19 things that were competitive threats. Amongst those there 20 was the NC work which is one thrust which we actually got 21 involved in and did pretty well in. Then there were various 22 people using pieces of Java technology which we also to a 23 limited degree got involved in.</p> <p>24 Q. (BY MR. HOSIE) Sure, sure, the subject of the Sun 25 One case in San Jose?</p>	<p>Page 29</p> <p>1 A. Well, basically a pure NC isn't going to have an 2 operating system, it's going to have the ability to do 3 presentation. And that's why they called it thin, because 4 you never had to update the software that was on it. Now, 5 the problem you get into is then you can't do things like --</p> <p>6 Q. Multimedia?</p> <p>7 A. -- video to it. Now, you know, more recently, 8 these low end devices, it's been cheaper to put things in 9 them, but they've always had big problems with things like 10 streaming video or add-ins, plug-ins, things of that nature. 11 So there's a whole spectrum of devices going from what is 12 truly a network computer like Windows Terminal Server all the 13 way up to a full-blown PC.</p> <p>14 Q. As a continuum, if you will?</p> <p>15 A. Well, essentially it was -- from a technological 16 point of view there is a continuum. In fact, the way it's 17 turned out, most points on the continuum have not captured 18 any popularity. The PC itself because of its rich 19 functionality is very high volume, and then there's some of 20 these true thin devices that are high volume.</p> <p>21 These things that were proposed that were in the 22 middle that sort of ran local functionality but sort of 23 didn't run full applications, they were a complete failure in 24 the marketplace. I mean, even the people who had them, you 25 know, just had them sitting there, eventually discontinued</p>

8 (Pages 26 to 29)

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1 their use.

2 Q. I think you called them a few minutes ago the  
3 medium fat?

4 A. Right. But in our industry not everybody agrees on  
5 terminology, and so there was a tendency to use the term thin  
6 or network computer in very different ways by different  
7 companies.

8 Q. And for the medium fat device that you've described  
9 for me twice now, can you recall some non-Microsoft runtimes  
10 that were in use?

11 A. Yeah, all of the RTOSes were proposed there. IBM  
12 had one. I think one of the most popular was what's called  
13 Wind River was used in most of them.

14 Q. Mr. Raikes goes on to say, "This is more than just  
15 an OS battle. This is about Windows clients, Windows  
16 servers, Windows tools, and Windows applications."

17 Do you see that, sir?

18 A. I do.

19 Q. Would you agree with Mr. Raikes that the NC battle,  
20 including the continuum from thin to medium fat to fat,  
21 presented more than just an OS battle?

22 MR. DOUGLAS: Objection to the form.

23 A. I think what Mr. Raikes is saying is if you don't  
24 buy a PC with Windows, then there's a number of Microsoft  
25 products that require Windows you aren't a candidate to buy.

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Page 33

1 Q. (BY MR. HOSIE) And then he goes on to note, "If  
2 Microsoft technology is relegated into 'yesterday's  
3 technology' in lieu of the Java operating environment and  
4 Java apps, Microsoft loses."

5 What does that language mean to you, Mr. Gates?

6 MR. DOUGLAS: Objection. Form and foundation.

7 Q. (BY MR. HOSIE) The language I've just read.

8 A. I think he's saying nobody wants to be yesterday's  
9 technology, that people prefer to be today's technology.

10 Q. Well, if people generally, consumers generally  
11 adopted Java operating environment and Java apps, would  
12 Microsoft lose, sir?

13 MR. DOUGLAS: Objection to the form. Hypothetical.

14 A. If historically they would have bought from us and  
15 now they're buying from somebody else, that represents a --

16 Q. (BY MR. HOSIE) A loss?

17 A. -- a potential loss of a customer.

18 Q. And this was a competitive threat that you  
19 personally were concerned about in 1997, potentially losing  
20 these customers?

21 A. Which competitor are we talking about?

22 Q. I'll take them as a group, sir. You personally  
23 were concerned that Microsoft was running the risk in 1997 of  
24 people abandoning a Windows-based system and moving to some  
25 sort of thin or medium fat NC Java-driven system?

1 was that it was something that provided some kind of media  
2 capabilities?

3 MR. DOUGLAS: Objection to the form of the  
4 question. It's vague, ambiguous and argumentative.

5 A. I never read a spec for the Java Media Framework.

6 Q. (BY MR. HOSIE) Well, I really wasn't asking if you  
7 had read specs, sir, I'm asking you what you recall about  
8 what the JMF was.

9 MR. DOUGLAS: Objection.

10 A. I bet it's related to media just because of the  
11 name, but the exact notion or even the vague notion of what  
12 would have been included in that, I'm not sure.

13 Q. (BY MR. HOSIE) Give me your best sense, please.

14 A. Media-related functionality.  
(Deposition Exhibit No. 5 was marked  
for identification.)

15 Q. (BY MR. HOSIE) Let me show you what's been marked  
as Exhibit 5. Mr. Gates, I've marked as Exhibit 5 an e-mail  
thread or string. Do you call them threads or strings  
personally?

16 A. Either one is fine.

17 Q. You're fine with either reference?

18 A. Absolutely.

19 Q. Okay. I will note, sir, that you're not copied on  
20 this series of e-mails, nor are you a direct recipient as far

9 (Pages 30 to 33)

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<p style="text-align: right;">Page 34</p> <p>1 as I can tell, but I'll see if I can jog your memory with  2 something that Ms. Kate Seekings says. Now, who is Kate  3 Seekings?</p> <p>4 A. No idea.</p> <p>5 Q. You recognize that she was at least a Microsoft  6 employee?</p> <p>7 A. No.</p> <p>8 Q. All right. On the bottom of this page --</p> <p>9 A. Was she?</p> <p>10 Q. Yes, she was.</p> <p>11 A. Okay.</p> <p>12 Q. There's a paragraph that I'll read and I'm going to  13 ask you if agree or disagree with what I read. Here's the  14 quote: "Intel's foray into Java development may result in a  15 crop of Intel-based" --</p> <p>16 A. Where are you?</p> <p>17 Q. First page.</p> <p>18 A. Okay. First page?</p> <p>19 Q. Yeah, right on the cover.</p> <p>20 A. I don't think so.</p> <p>21 Q. And you see these little bullet points? Your  22 counsel's pointing it out to you, Mr. Gates.</p> <p>23 A. But that's -- you see, that's this. That's not  24 from Kate Seekings' mail, that's from this article.</p> <p>25 Q. Yes. No, I know, and she is just picking up the</p>	<p style="text-align: right;">Page 36</p> <p>1 didn't believe in 1997 that Intel's foray into Java  2 development might result in a crop of Intel-based NCs?</p> <p>3 A. No. Intel could have done whatever they wanted to  4 do with NCs independently of whatever Intel did with Java.</p> <p>5 Q. Okay. Now, thinking back to Intel's work in the  6 multimedia space in 1997, is it fair to say, Mr. Gates, that  7 you personally were unhappy with that work?</p> <p>8 MR. DOUGLAS: Objection to the form.</p> <p>9 A. I don't know the specific year to target it to, but  10 there were a period of years where it was frustrating that  11 some of the software work that Intel did we felt didn't  12 advance Intel's interests and complicated some things we were  13 trying to do.</p> <p>14 Q. (BY MR. HOSIE) Okay, so you recall a period of  15 time when you personally were less than happy with Intel's  16 work because you viewed them as creating imperfect software  17 that complicated things you wanted to do; fair summary?</p> <p>18 MR. DOUGLAS: Objection to the form.</p> <p>19 A. At a very high level, yes.</p> <p>20 Q. (BY MR. HOSIE) That's it, that's the only thing  21 you were concerned about, sir?</p> <p>22 A. No.</p> <p>23 MR. DOUGLAS: Objection to the form, plus  24 argumentative.</p> <p>25 Q. (BY MR. HOSIE) Let me put it this way, Mr. Gates.</p>
<p style="text-align: right;">Page 35</p> <p>1 bullet points, putting them in her own e-mail.</p> <p>2 A. I think it was just copied. It's part of the  3 article.</p> <p>4 Q. Right, and I'm about to --</p> <p>5 A. So it's not a statement from her.</p> <p>6 Q. In the sense of Kate Seekings writing the words, I  7 think that's right, but I'm going to read the language and  8 ask you if agree or disagree with the point made, okay?</p> <p>9 A. Okay.</p> <p>10 Q. Here's the language. Open quote, "Intel's foray  11 into Java development may result in a crop of Intel-based  12 network computers running native JavaOS and applications, as  13 well as forthcoming NetPCs running Java applets alongside  14 Windows."</p> <p>15 Did you personally feel in 1997 that Intel's foray  16 into Java might result in a crop of Intel-based NCs?</p> <p>17 MR. DOUGLAS: Objection. Form and foundation.</p> <p>18 A. It looks like they're confusing what Intel's doing  19 on with Java with what might happen in network computers.</p> <p>20 And, you know, as I said, there are many ways that people  21 talked about the term network -- used the term "network  22 computer." But from my point of view, what Intel was doing  23 with Java and what they were doing with network computers,  24 those are two different things.</p> <p>25 Q. (BY MR. HOSIE) So you're saying you personally</p>	<p style="text-align: right;">Page 37</p> <p>1 Isn't it true, sir, that you personally were distressed and  2 unhappy and even angry that Intel was working with Java?</p> <p>3 A. There were aspects of Intel's Java work that we  4 felt was bad for Intel and was something that we didn't think  5 was fruitful or good for them to do, and we -- there was a  6 period of time where we shared with them our views on where  7 Java was appropriate and where it wasn't.</p> <p>8 Q. Isn't it true, sir --</p> <p>9 MR. DOUGLAS: Hold on. I'll give a belated  10 objection to form on the question. I didn't want to  11 interrupt the witness. Go ahead.</p> <p>12 MR. HOSIE: Did you get your objection?</p> <p>13 MR. DOUGLAS: Yes.</p> <p>14 Q. (BY MR. HOSIE) Mr. Gates, isn't it true that you  15 personally coerced Intel into abandoning its JMF work in 1997  16 and 1998?</p> <p>17 A. No.</p> <p>18 MR. DOUGLAS: Objection to the form.  19 (Deposition Exhibit No. 6 was marked  20 for identification.)</p> <p>21 Q. (BY MR. HOSIE) Let me show you what I've marked as  22 next in order, Exhibit 6. Counsel, copy for you.</p> <p>23 Mr. Gates, I'd ask you to keep your exhibits in a  24 pile there because there's some possibility, perhaps a  25 likelihood, that I would cycle back to some of them.</p>

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1 MR. DOUGLAS: I am keeping them in a pile for him.  
 2 MR. HOSIE: Thank you.  
 3 Q. (BY MR. HOSIE) For the record, Exhibit 6 is a  
 4 cover page, an e-mail that's been redacted on ostensibly  
 5 privileged grounds from Paul Maritz to David -- to Marshall  
 6 Brumer, Aaron Contorer and Mr. Gates.

7 Aaron Contorer was your technical assistant or TA  
 8 in this period, Mr. Gates?

9 A. Looking at this e-mail, I think it's likely. I  
 10 don't remember exactly when he was, but it's likely.

11 Q. When did Eric Rudder replace him, if you recall?

12 A. I don't.

13 Q. And was Eric Rudder replaced by Anoop Gupta or was  
 14 there somebody in between the two?

15 A. Well, the nature of this so-called technical  
 16 assistant job was changed between what Aaron did and what  
 17 Eric did, but it's true that after Aaron left, Eric took the  
 18 job. It became a much bigger job. And then Anoop took it  
 19 and it was about -- treated about the same as Eric.

20 I don't remember -- each of these guys worked for  
 21 me for about two and a half years, I'd say. And now actually  
 22 Anoop is doing something else, and another person, Alex  
 23 Genaris, is now my technical assistant.

24 Q. Anoop is now running your RTC group?

25 A. That's right.

1 Q. That's all I see too.  
 2 A. Okay, so we're seeing the same thing. I never got  
 3 an e-mail, I don't think ever, that just said "privileged" so  
 4 it's hard for me to remember, because clearly --  
 5 Q. There was something here?  
 6 A. -- at least in the form we're looking at it, it  
 7 might even have stood out even though it's seven years ago.  
 8 But so I don't think I got it -- anything like this.

9 Q. All right, fair enough. And perhaps I'm not  
 10 understanding something about Microsoft's practices, but  
 11 doesn't this little envelope with the title mean there's an  
 12 attachment or an enclosure?

13 A. Yeah. Actually, e-mail doesn't work that way now,  
 14 but back then I think that is the way it worked. I think  
 15 this -- I think what's going on here is they got rid of all  
 16 the text and they just left the -- it's not a -- enclosure  
 17 and attachment is basically the same idea. And they're just  
 18 saying that Maritz enclosed that in this thing.

19 Q. Fair enough, okay. So the enclosure was at least  
 20 sent to you by the cover e-mail; correct?

21 A. If we're interpreting what's going on here  
 22 correctly then I got an e-mail with unknown contents that  
 23 appears from this printout to have enclosed this e-mail.

24 Q. Thank you. And you don't recall reading the  
 25 enclosure, do you, back then?

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1 Q. All right. Attached to this e-mail is something in  
 2 the lower left which is noted as "Intel 1/30 roadmap,  
 3 Java/Manage." Do you see that?

4 A. What is it?

5 Q. That denotes an attachment, does it not, sir?

6 A. I don't think so. Java/Manage?

7 Q. Turn to the next page.

8 A. It may be an enclosure.

9 Q. Fair enough. And do you see the attached e-mail  
 10 dated February 3, 1997, and the subject line?

11 A. Yeah, it looks -- on the second page it looks like  
 12 there's an e-mail which may be that somebody took that  
 13 enclosure and expanded it and printed it out.

14 Q. And do you recall receiving this February 3, 1997  
 15 memo, sir?

16 A. I don't see my name on it.

17 Q. Do you see your name on the cover page enclosing  
 18 the Intel 1/30 roadmap Java document?

19 A. Well, this is confusing. What is this e-mail?

20 Q. Well, it's hard for us to tell, Mr. Gates, because  
 21 the text has been redacted on privileged grounds. That's why  
 22 --

23 A. A hundred percent of it?

24 Q. Apparently so; but I would only be speculating.

25 A. Because all I see is the word "privileged."

1 A. I wonder why he didn't send it to me directly.

2 Q. I don't know.

3 A. Okay.

4 Q. Do you recall reading this, sir, back then?

5 A. This is the kind of meeting summary that I would  
 6 see from time to time. I don't remember this specific one.

7 Q. Mr. Gates, was it your practice if you received a  
 8 meeting summary to read it?

9 A. Some, but absolutely not all of them.

10 Q. Sure. It would depend on --

11 A. I mean, this one, this is classic because, you  
 12 know, how many different things -- you know, like take Intel  
 13 code names. I see about 20 Intel code names just on the  
 14 first page. I wouldn't have been knowledgeable enough to  
 15 interpret all of those things. But typically a meeting with  
 16 Intel, an important meeting, somebody would put notes  
 17 together.

18 Q. And if you got a meeting report about an important  
 19 meeting with Intel, it would be your practice to read the  
 20 report, I would think?

21 A. There were a lot of meetings with Intel, and some I  
 22 would get reports on and some I wouldn't. This one I wasn't  
 23 copied on.

24 Q. But my question, sir, was a little different. If  
 25 there were an important meeting with Intel and if you

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1 received a meeting report about that important meeting, it  
 2 would have been your practice, generally speaking, to read  
 3 it; correct?

4 A. Well, it's kind of a circular definition. If I  
 5 didn't read it, you know, that must mean some -- I exercised  
 6 some judgment about its relative importance to me relative to  
 7 the use of my time.

8 Q. So you're not willing to agree that if there were  
 9 an important meeting with Intel and you got a summary of the  
 10 important meeting, it wouldn't be, generally speaking, your  
 11 practice to read the summary?

12 MR. DOUGLAS: Objection. Asked and answered.

13 A. The important meetings were the ones I attended.  
 14 Those were the ones probably of the greatest importance.

15 Q. (BY MR. HOSIE) Okay.

16 A. Beyond that, I'm not sure what you mean by  
 17 important.

18 Q. If you could turn to the third page of the  
 19 enclosure or attachment, given that they're synonyms, you'll  
 20 see at the top third a heading, Java - JohnLu/Will Swope?

21 A. Yeah.

22 Q. And a series of bullet points following. JohnLu  
 23 would of course be John Ludwig?

24 A. Yes.

25 Q. I'm sorry, Mr. Gates, I didn't mean to rush you.

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1 Why don't you take a minute to read the bullet points.

2 A. (Witness reading document.) Okay.

3 Q. Who was Will Swope?

4 A. I believe he's an employee of Intel.

5 Q. That would be correct, sir.

6 A. Hey, what do I get if I get all the answers right?

7 Q. How about a heartfelt thanks.

8 MR. DOUGLAS: You'd only have another 55,000  
 9 employees.

10 Q. (BY MR. HOSIE) I'd like to ask you a few questions  
 11 about the fourth and fifth bullet points down. The fourth  
 12 says MM Libraries.

13 What is your understanding of an MM library, sir?

14 A. No idea.

15 Q. Multimedia library? Does that help?

16 A. No.

17 Q. Doesn't ring a bell? And then the text goes on to  
 18 say, "This is the area of most contention since Intel does  
 19 not see their work with Sun and others as bad for the overall  
 20 PC space, only as good for Intel."

21 Was it your understanding in 1997 thinking back,  
 22 Mr. Gates, that Intel, as you understood it, did not see  
 23 their work with Sun and others as bad for the overall PC  
 24 space, just good for Intel?

25 A. I don't know what you're talking about.

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1 Q. You don't know --

2 A. When it says "this is the area," what's being  
 3 referred to?

4 Q. Multimedia, JMF.

5 A. What makes you say that?

6 Q. MM is an acronym for multimedia libraries, sir.

7 MR. DOUGLAS: What's the question?

8 A. Yeah, let's be clear on what you're asking me.

9 Q. (BY MR. HOSIE) Did you personally feel that  
 10 Intel's work on multimedia, JMF, for example, was an area  
 11 where Intel did not see their work with Sun and others as bad  
 12 for the overall PC space, only as good for Intel?

13 MR. DOUGLAS: Objection. Form and --

14 Q. (BY MR. HOSIE) Do you understand the question,  
 15 Mr. Gates?

16 MR. DOUGLAS: And objection. Form and formation.

17 A. I don't know what Intel thought about their work  
 18 and I don't know that much about the work.

19 Q. (BY MR. HOSIE) I'm asking you not to read Intel's  
 20 mind but for your understanding of your perception of Intel's  
 21 belief, if you will.

22 MR. DOUGLAS: Same objection.

23 A. Isn't that asking me about Intel's belief?

24 Q. (BY MR. HOSIE) No, I'm asking you about what you  
 25 believed Intel thought.

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1 A. I don't know what Intel thought.

2 Q. I'm asking you about what you thought Intel  
 3 thought.

4 A. I didn't know what Intel thought.

5 MR. DOUGLAS: Excuse me, please. You're just  
 6 arguing with the witness. He's answered the question.

7 Q. (BY MR. HOSIE) Did you have a personal belief  
 8 about Intel's opinion on whether its work with Java, JMF, Sun  
 9 and others was good for the PC space or bad for the PC space?

10 MR. DOUGLAS: Objection. Form. Vague, ambiguous,  
 11 and foundation.

12 A. I've always thought about different people at Intel  
 13 in terms of, you know, when I was going to meet with one  
 14 person I would find out what they were thinking. In terms of  
 15 Java, I know over time different people at Intel thought  
 16 different things, did different things. So I don't think  
 17 there's any kind of monolithic, simple answer.

18 Q. (BY MR. HOSIE) I think that's fair, because of  
 19 course a corporation is just composed of individuals and  
 20 individuals may feel differently about even the same issues;  
 21 correct?

22 MR. DOUGLAS: Objection to the form.

23 A. And some may know more and some may know less.

24 Q. (BY MR. HOSIE) All right. Was it one of your  
 25 personal objects in 1997 to try to persuade Intel that its

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1 work with Java, especially in the JMF area, was in fact bad  
 2 for the overall PC space?  
 3 MR. DOUGLAS: Objection to the form.  
 4 MR. BURT: Could you read the question back,  
 5 please?  
 6 (Reporter read back as requested.)  
 7 MR. DOUGLAS: And in addition, objection on  
 8 foundation grounds.  
 9 A. There were definitely discussions about Java and  
 10 how that might hurt Intel's interests. I don't think there  
 11 was anything specific to Java media.  
 12 Q. (BY MR. HOSIE) Do you recall discussions with  
 13 folks at Intel about how Intel's work with Java would hurt  
 14 Microsoft's interests?  
 15 A. We generally didn't focus on that because, you  
 16 know, that wasn't really Intel's concern, but we talked to  
 17 them about what we were doing in Java because we had a number  
 18 of Java activities including a contract we'd entered into  
 19 with Sun and some of our own native Java work, and they were  
 20 sometimes confused about what we were and weren't doing.  
 21 Q. My question was a little different, Mr. Gates, I'll  
 22 put it again.  
 23 Do you recall conversations with folks at Intel  
 24 where you expressed concern about Intel's Java work being bad  
 25 for Microsoft?

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1 MR. DOUGLAS: And I think that question's been  
 2 answered by the witness. He said no.  
 3 Q. (BY MR. HOSIE) Is that a no, sir?  
 4 A. I don't recall any specific question where that  
 5 would have come up. Intel was mostly interested in how we  
 6 thought things were related to Intel strategy. We from time  
 7 to time would share with them our strategy including what we  
 8 were doing with Java.  
 9 Q. Do you recall having a multimedia offsite in early  
 10 February 1997?  
 11 A. No.  
 12 Q. What's the phrase "offsite" mean in Microsoft  
 13 vernacular, as you understand it, sir?  
 14 A. I don't think we've adopted a unique definition of  
 15 that particular word.  
 16 Q. It hasn't been extended, as it were?  
 17 A. No. I think it means meeting somewhere other than  
 18 in the normal offices.  
 19 Q. And do you recall a meeting somewhere other than  
 20 the normal offices focusing on multimedia in early February  
 21 1997?  
 22 A. No.  
 23 Q. Let's see if I can refresh your recollection with  
 24 what I've marked as Exhibit 7.  
 25 (Deposition Exhibit No. 7 was marked

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1 for identification.)  
 2 Q. (BY MR. HOSIE) Mr. Gates, if at any time you wish  
 3 to take a break, just let me know.  
 4 A. (Witness reading document.) Okay. What's the  
 5 question?  
 6 Q. Does reading this MM offsite summary refresh your  
 7 recollection of a multimedia offsite meeting in February  
 8 1997?  
 9 A. I wonder what the offsite -- there's clearly an  
 10 offsite, but I wonder what the focus of it was.  
 11 MR. DOUGLAS: Well, do you want the witness just to  
 12 read the e-mail, and your question then is does it refresh  
 13 his recollection of being there?  
 14 Q. (BY MR. HOSIE) I'm sorry, Mr. Gates, I thought you  
 15 had read this e-mail.  
 16 A. I've read it now.  
 17 Q. Yeah, thank you. And my question was, having read  
 18 it, is your memory refreshed as to a MM offsite in February  
 19 of 1997?  
 20 A. Actually, I think it was a graphics offsite.  
 21 Q. Oh, okay. So you do remember the offsite meeting?  
 22 A. No, I don't actually remember the meeting. This  
 23 memo is talking about a lot of graphics issues, and this  
 24 person, Deborah Black, who did work at Microsoft at the time  
 25 seems to be talking about some discussions including some

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1 comments by me related to graphics.  
 2 Q. And let me ask you about her recounting of comments  
 3 attributed to you. You'll see them in the middle of the  
 4 page.  
 5 A. Well, that's not the only place.  
 6 Q. Right, but let me start there.  
 7 "BillG's direction on Talisman." You of course  
 8 would be the BillG?  
 9 A. Almost certainly.  
 10 Q. All right. What was Talisman, sir?  
 11 A. It was a piece of graphics, hardware and software.  
 12 Q. And this memo recounts that you've said, "We've  
 13 invested a lot in Talisman and should follow through on it."  
 14 Was that your view in 1997?  
 15 A. I'm not sure. It's the kind of viewpoint I might  
 16 have of something we've invested. Turns out Talisman  
 17 eventually came to an end, but.  
 18 Q. And the next point, and let me quote this, open  
 19 quote, "We need to close the Intel issue - preferably with  
 20 Intel as our key partner. However, we cannot give in to  
 21 Intel and allow them to ship Talisman technology on  
 22 non-Windows systems. Key issue is preventing Intel to use  
 23 Talisman with Java VM."  
 24 VM would be short for virtual machine, sir?  
 25 A. Uh-huh.

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<p style="text-align: right;">Page 50</p> <p>1 Q. Did you personally think it was a key issue to 2 prevent Intel from using Talisman with Java Virtual Machine? 3 MR. DOUGLAS: Objection to form and foundation. 4 A. I know we've invested a lot -- I don't recall 5 what's being discussed when Deborah wrote that. I know we've 6 invested a lot in Talisman and we'd said to Intel, are you 7 willing to pay us a royalty when our intellectual property 8 gets used. And they had said no, you have to get any benefit 9 from your inventions through the sales of Windows. And then 10 we said, okay, then we can only support it in the Windows 11 environment. And, you know, that's the way that came out. 12 Now, Talisman, you know, it became moot that even 13 though they wouldn't pay us for our inventions, we eventually 14 -- although actually we have a lot of patents that are 15 valuable today, we actually never ended up productizing that 16 work in this time frame. 17 Q. (BY MR. HOSIE) Is it your testimony, Mr. Gates, 18 that you did feel that preventing Intel from using Talisman 19 with Java Virtual Machine was a key issue but only because of 20 IP royalty issues? 21 MR. DOUGLAS: Objection to the form. 22 A. The issue is are we going to get paid anything when 23 Talisman is used, that's all. And we thought because we'd 24 done some invention that we ought to get paid. 25 Q. (BY MR. HOSIE) So your testimony here today, sir,</p>	<p style="text-align: right;">Page 52</p> <p>1 there where I've talked to Andy about a large range of 2 topics. 3 Q. And you recall there was a period of time when one 4 of those topics was Intel's work with Java? 5 A. Not so much Intel's work with Java, although that 6 came up, it was just the whole notion of what was Microsoft 7 doing with Java, how is that affecting the industry. Java 8 refers to quite a range of things from a computer language to 9 an intermediate representation to various runtime activities, 10 and it's a term that was used by different people even within 11 one company in very different ways and, you know, a hot topic 12 in the computer industry. And so during the years it was a 13 hot topic, it was one of the things that would have come up 14 in my meetings with Andy. 15 (Deposition Exhibit No. 8 was marked 16 for identification.) 17 Q. (BY MR. HOSIE) Let me show you what I've marked as 18 our next in order, 8. 19 Mr. Gates, I'll give you a chance to read this 20 before I ask questions, but let me identify it for the 21 record. It is an e-mail thread or string that ends in a 22 chronological sense with an e-mail from Marshall Brumer to 23 Bill Gates, dated February 24, 1997. 24 A. (Witness reading document.) Okay. I mean, do I 25 need to read it all?</p>
<p style="text-align: right;">Page 51</p> <p>1 is that your only concern with Talisman being used with the 2 Java Virtual Machine was whether you were paid for your 3 intellectual property? 4 MR. DOUGLAS: Objection to the form. 5 A. I'm not commenting at all about anything other than 6 reading this memo that reminds me of only one concern which 7 is whether we were paid at all for the Talisman inventions. 8 Q. (BY MR. HOSIE) Do you recall that you personally 9 had any other concerns about Intel using Talisman with the 10 Java Virtual Machine? 11 A. No. 12 Q. So the only concern you can recall is one having to 13 do with IP royalty streams? Is that your testimony? 14 A. Whether we got paid at all for our Talisman work, 15 just that. 16 Q. And that's the key issue that you believe you 17 discussed at this multimedia offsite? 18 A. I'm not sure. 19 Q. Now, beginning in February of 1997, you had a 20 series of conversations with Andy Grove of Intel about 21 Intel's Java work, did you not, sir? 22 A. Throughout a period of many years I had many 23 conversations with Andy. I have no idea in what time period 24 Java-related issues might have come up. It might have 25 started before that, after that, but there were many years</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Well, if you could read the first page I think that 2 would be helpful, sir. 3 A. (Witness reading document.) Okay. 4 Q. Sir, I assume you have no recollection but let me 5 ask, in the spirit of optimism. Do you recall receiving this 6 e-mail from Marshall Brumer in February 1997? 7 MR. DOUGLAS: Objection to the form. 8 A. I don't know what you mean by optimism. 9 Q. (BY MR. HOSIE) Well, let me rephrase my question. 10 Do you recall getting this e-mail from Marshall Brumer on or 11 about February 24, 1997? 12 A. No. 13 Q. All right, sir. Who is Marshall Brumer, please? 14 A. He's an employee of Microsoft who for a period of 15 time managed our liaison with Intel. 16 Q. Earlier you told me you weren't sure who Kate 17 Seckings is. You see that this e-mail identifies Kate 18 Seckings as a PM or project manager in the Java group? 19 A. I wonder which group she was in. 20 Q. Would have been a Microsoft group as you read this 21 e-mail? 22 A. It appears to be, yes. 23 Q. Now, the first sentence references a call that you 24 had scheduled with Andy. Do you see that reference? 25 A. It appears to refer to the fact I'm going to talk</p>

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<p style="text-align: right;">Page 54</p> <p>1 to Andy.</p> <p>2 Q. And that would be Andy Grove of Intel?</p> <p>3 MR. DOUGLAS: Objection to the form.</p> <p>4 A. Almost certainly.</p> <p>5 Q. (BY MR. HOSIE) And he was the CEO of Intel at the time?</p> <p>6 A. That's right.</p> <p>7 Q. And this is the Andy Grove that you've talked to frequently over the years about issues in the computer space?</p> <p>8 A. Right.</p> <p>9 Q. Mr. Bruner goes on to say that, "At a hi-level, we are most concerned that Intel is helping one of OUR," in bold, "strongest competitors by supporting a scheme that allows first Windows to be replaced by JavaSoft work and then subsequently allowing Intel's x86 to be replaced by Sun CPUs for Java."</p> <p>10 A. Do you see that, sir?</p> <p>11 A. I do.</p> <p>12 Q. And did you personally share that concern in 1997, specifically that Intel was helping one of Microsoft's strongest competitors?</p> <p>13 MR. DOUGLAS: Objection to the form.</p> <p>14 A. Intel's always had activities with our competitors. That's no surprise, if that's what you mean.</p> <p>15 Q. (BY MR. HOSIE) It wasn't my question, Mr. Gates.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. I'm not sure I know what you mean by concern.</p> <p>2 Intel worked with lots of software companies including Microsoft, did a lot with Microsoft, and they did a lot with Microsoft's competitors at all times. So it wasn't a concern in the sense that we always expected that to be the case.</p> <p>3 Q. (BY MR. HOSIE) So you're saying this is a concern that you personally did not have? Is that your testimony?</p> <p>4 MR. DOUGLAS: Objection to the form.</p> <p>5 A. I didn't expect that ever not to be the case. I did think that we could talk to Intel about what we thought would be helpful to Intel or would hurt Intel.</p> <p>6 Q. (BY MR. HOSIE) Well, I'll ask my question one last time, sir.</p> <p>7 Did you personally share the concern that Intel was helping one of Microsoft's strongest competitors? If you could answer that yes or no, I would appreciate it.</p> <p>8 MR. DOUGLAS: Same objection.</p> <p>9 A. Yeah, I think I've answered that.</p> <p>10 Q. (BY MR. HOSIE) Okay. And were you personally concerned that Intel was helping support a scheme that would have Windows be replaced by JavaSoft?</p> <p>11 MR. DOUGLAS: Objection. Form and foundation.</p> <p>12 A. Intel chose to do work related to Java, and we explained, as the mail says, that that actually could work against their interests. And they took our input and did</p>
<p style="text-align: right;">Page 55</p> <p>1 My question was were you concerned, you personally concerned that Intel was helping one of Microsoft's strongest competitors?</p> <p>2 MR. DOUGLAS: Same objection.</p> <p>3 A. At all times we knew that Intel would be doing things with our competitors.</p> <p>4 Q. (BY MR. HOSIE) Do you recall the question I asked, sir?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Could you please answer it?</p> <p>7 MR. DOUGLAS: Objection. You're just arguing with the witness.</p> <p>8 And, Mr. Gates, if you'd like to have your answer read back, the prior question and answer read back to determine whether there's anything else you can add, you may have that done as well.</p> <p>9 Q. (BY MR. HOSIE) Would you like me to put my question again, sir?</p> <p>10 A. Go ahead.</p> <p>11 Q. Thank you, I will.</p> <p>12 Mr. Gates, were you personally concerned in 1997 that Intel was helping one of Microsoft's strongest competitors?</p> <p>13 MR. DOUGLAS: Objection, form. Plus asked and answered.</p>	<p style="text-align: right;">Page 57</p> <p>1 whatever they wanted to do.</p> <p>2 Q. (BY MR. HOSIE) So your testimony, Mr. Gates, is that you were concerned but it was purely altruistic, and a concern for Intel's well-being?</p> <p>3 A. No, I'm --</p> <p>4 MR. DOUGLAS: Objection to form and foundation.</p> <p>5 A. I'm certain that's a bad summary of what I said.</p> <p>6 Q. (BY MR. HOSIE) That doesn't sound right, does it?</p> <p>7 A. No. You have a hard time summarizing what I'm saying.</p> <p>8 Q. Well, let me ask my question again.</p> <p>9 Were you concerned that Intel was supporting a scheme to replace Windows with JavaSoft?</p> <p>10 MR. DOUGLAS: Objection to the form.</p> <p>11 Q. (BY MR. HOSIE) Do you understand the question, sir?</p> <p>12 A. Yeah, you're -- are you asking me about Bruner's mail or just my general feeling?</p> <p>13 Q. I'm asking you to think back and tell me whether you personally were concerned in 1997 that Intel was supporting a scheme to replace Windows with JavaSoft.</p> <p>14 MR. DOUGLAS: Same objection.</p> <p>15 A. I think it's incorrect to say that Intel as a whole was supporting such a scheme. They were doing things that were -- could be viewed as helpful to that, they were doing</p>

15 (Pages 54 to 57)

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<p style="text-align: right;">Page 58</p> <p>1 lots and lots of things that could be viewed as not helpful  2 to that. Intel was engaged in a huge range of activities,  3 and I think the e-mail that you've got here is talking about  4 one particular Intel activity, not Intel as a whole.</p> <p>5 Q. (BY MR. HOSIE) And was Intel's work to support a  6 scheme to replace Windows with JavaSoft a concern of yours,  7 Mr. Gates?</p> <p>8 MR. DOUGLAS: Same objection.</p> <p>9 A. Intel was doing a variety of things with Java.  10 It's not my view -- you're reading from Brumer's mail.  11 Various things they were doing could have helped various  12 aspects of Java. It was not some big Intel top level  13 strategy to cause Windows to be replaced, that I can say for  14 sure. They were doing some things that were helpful to  15 Windows, some things that were helpful to our competitors,  16 and that was always the case. The whole time we worked with  17 Intel, they chose what to do with our competitors, they chose  18 what to do with us.</p> <p>19 Q. (BY MR. HOSIE) You weren't telling Intel what to  20 do, you being Microsoft?</p> <p>21 A. We often would share with them our view of the  22 industry and then Intel would decide what it wanted to do.</p> <p>23 Q. Because it wouldn't be -- well, strike that, let me  24 go back to my question.</p> <p>25 Focusing on that aspect of Intel's work that</p>	<p style="text-align: right;">Page 60</p> <p>1 telephony. Those are separated by commas, are they not, sir?</p> <p>2 A. Are you suggesting that the animation and 3D were  3 not part of JMF?</p> <p>4 Q. Well, I'm going to ask you this. Has reading this  5 refreshed your recollection of what JMF was, sir?</p> <p>6 A. I'm more confused now that I'm looking at this.</p> <p>7 Q. Certainly the phrase "Java Multimedia" is one that  8 you yourself used back in 1997, is it not, sir?</p> <p>9 A. As a formal term to refer to a particular project,  10 no, but the notion that people were doing multimedia type  11 work related to Java, certainly we knew that was going on and  12 we'd talk about the fact it was going on.</p> <p>13 Q. And when you use the phrase Java Multimedia, what  14 did you mean by it?</p> <p>15 A. Just any activity related to Java that involved  16 supporting multimedia.</p> <p>17 Q. Let me show you our next in order, Exhibit 9,  18 Mr. Gates.</p> <p>19 (Deposition Exhibit No. 9 was marked  20 for identification.)</p> <p>21 MR. HOSIE: As Mr. Gates reads this, let me note  22 for the record that this is an e-mail thread that ends with  23 an e-mail from Mr. Gates to Jim Allchin, dated February 20,  24 1997.</p> <p>25 A. Okay, I've read the top of it.</p>
<p style="text-align: right;">Page 59</p> <p>1 involved Intel supporting a scheme to replace Windows with  2 JavaSoft, that aspect of the work gave you, Bill Gates,  3 heartburn; fair?</p> <p>4 MR. DOUGLAS: Objection to the form. Vague and  5 ambiguous.</p> <p>6 A. No. Intel didn't have a view to do something that  7 was monolithic in nature. They had ways that they were  8 engaging in optimizing Java things on the Intel architecture.  9 Some of those we thought worked against Intel's interests and  10 we shared our view on that. But they didn't -- it wasn't  11 some grand scheme at Intel related to this.</p> <p>12 Q. (BY MR. HOSIE) You see there's the attached Kate  13 Seekings memo that Mr. Brumer forwarded to you?</p> <p>14 A. E-mail, yes.</p> <p>15 Q. Yes, thank you, e-mail memo. And there's a heading  16 called Intel's involvement?</p> <p>17 A. I see that.</p> <p>18 Q. And Ms. Seekings says, "Intel is working with  19 Sun/JavaSoft and partners on defining Java Media Framework."  20 Do you see that, sir?</p> <p>21 A. Uh-huh.</p> <p>22 Q. And she goes on to describe something, something  23 about the JMF, does she not?</p> <p>24 A. Yeah, it says telephony APIs.</p> <p>25 Q. Well, JMF, comma, animation, comma, 3D, comma, and</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. (BY MR. HOSIE) You recall this e-mail, I'm sure,  2 sir?</p> <p>3 A. No.</p> <p>4 Q. Was it one of the e-mails shared with you by your  5 lawyers yesterday?</p> <p>6 A. I believe it was.</p> <p>7 Q. And how about the other exhibits I've marked? Were  8 any of those shared with you yesterday?</p> <p>9 A. We'd have to go back through them. I don't think  10 so, but do you want me to go back through them?</p> <p>11 Q. If you wouldn't mind. Just quickly rifle through  12 them and tell me if any of these were part of the mysterious  13 nine.</p> <p>14 MR. DOUGLAS: Objection to the form.</p> <p>15 MR. HOSIE: Sounds like a bad Hollywood movie, The  16 Mysterious Nine.</p> <p>17 A. Eight might have been; 7, no.</p> <p>18 MR. DOUGLAS: Mr. Gates, frankly, I think we  19 shouldn't do this exercise. This does violate the  20 attorney-client privilege to go into specifically what was  21 discussed with you yesterday. And asking about the specific  22 exhibits crosses that line, so I'll instruct you not to  23 answer further.</p> <p>24 Q. (BY MR. HOSIE) Mr. Gates, though, you do recall  25 that Exhibit 9 was shared by your counsel with you yesterday?</p>

16 (Pages 58 to 61)

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1 MR. DOUGLAS: Well, Mr. Gates, I'll instruct you  
 2 not to answer. You've already answered it.

3 MR. HOSIE: I think the bell's a little rung.  
 4 Counsel.

5 MR. DOUGLAS: And he's already answered, but I  
 6 would instruct him not to —

7 Q. (BY MR. HOSIE) Fair enough. Let me move on, then.  
 8 Prior to seeing this document yesterday do you recall seeing  
 9 it?

10 A. No.

11 Q. You say to Mr. Allchin in your e-mail, "If Intel  
 12 has a real problem with us supporting this then they will  
 13 have to stop supporting Java Multimedia the way they are. I  
 14 would gladly give up supporting this if they would back off  
 15 from their work on Java which is terrible for Intel. I have  
 16 a call with Andy on this topic coming up on Monday."

17 Sir, what was your concern with Intel's Java  
 18 Multimedia as you describe it here?

19 A. What's going on here is we're talking about some  
 20 support we plan to do for AMD.

21 Q. An Intel competitor?

22 A. And we went ahead and did that work for AMD. We  
 23 thought that — we were worried about how Intel would react  
 24 to it, and if they'd had a super negative reaction, we were  
 25 wondering how we were going to deal with that. In fact, we

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1 whatever they wanted to do.

2 Q. (BY MR. HOSIE) Mr. Gates, you said in 1997, "I  
 3 would gladly give up supporting this if they would back off  
 4 from their work on Java ..."

5 Do you see that.

6 A. ... "which is terrible for Intel."

7 Q. What was your concern here, sir?

8 A. I was worried that when we did this AMD work, Intel  
 9 would come to us and say, hey, we're upset that you're doing  
 10 this work. That was my concern.

11 Q. What was your concern about Intel's work on Java,  
 12 Mr. Gates?

13 A. This e-mail is about what our reaction would be if  
 14 they objected to our AMD work, which fortunately that didn't  
 15 come up.

16 Q. My question was different and I'll put it again.

17 A. Not related to the mail?

18 Q. What was your concern about Intel's Java work, sir?

19 A. That's not what this mail's about.

20 Q. Don't you here say, you know what, we won't help  
 21 AMD, and in exchange we want Intel to stop supporting Java  
 22 Multimedia?

23 MR. DOUGLAS: Objection to the form.

24 A. Absolutely not. It says if Intel has a real  
 25 problem with this, with us supporting this, which fortunately

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1 went ahead with this work, we did this work, and Intel didn't  
 2 do anything that related to that.

3 Q. To your knowledge, Mr. Gates, did anyone at  
 4 Microsoft communicate to Intel that Microsoft would not  
 5 support AMD in this area if Intel stopped working on Java  
 6 Multimedia?

7 A. No.

8 Q. How do you know that, sir?

9 MR. DOUGLAS: Objection.

10 A. I know what I know. I thought you asked me what I  
 11 knew. And how do I know what I know?

12 Q. (BY MR. HOSIE) Yeah. How do you know that no one  
 13 did that?

14 A. No, you asked me if I knew whether anyone did it,  
 15 and I said no, I didn't — as far as I know, no one did it.  
 16 This was about our concern about what Intel would do, what --  
 17 how Intel would react to what we were doing with AMD.

18 Q. Okay. You seem to have a desire to have Intel stop  
 19 supporting Java Multimedia here, do you not, sir?

20 MR. DOUGLAS: Objection to the form.

21 A. No. What I'm showing is that there's an irony that  
 22 if Intel tells us they don't want us to do something with  
 23 AMD, that that wouldn't be consistent on their part. And in  
 24 fact, Intel did behave consistently. We went ahead with this  
 25 work on AMD and they went ahead with their work on Java,

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1 that didn't happen.

2 Q. (BY MR. HOSIE) And you're here saying if Intel has  
 3 a real problem with this, you know what, we won't do it if  
 4 they stop supporting Java.

5 A. No, I'm saying it would be inconsistent for them to  
 6 come to us and say we shouldn't do the AMD work.

7 (Deposition Exhibit No. 10 was marked  
 8 for identification.)

9 Q. (BY MR. HOSIE) Let me show you what's been marked  
 10 as Exhibit 10, Mr. Gates. For the record, Exhibit 10 is an  
 11 e-mail thread that has as its originating e-mail a mail from  
 12 Mr. Gates to Paul Maritz, dated February 25, 1997.

13 Have you read it, sir?

14 A. Yes.

15 Q. Do you recall this e-mail?

16 A. No.

17 Q. Is this one of the nine reviewed with you  
 18 yesterday?

19 MR. DOUGLAS: Mr. Gates, I'm going to instruct you  
 20 not to answer.

21 And, Mr. Hosie, you know, save the time, because  
 22 I'll instruct him on all of the questions.

23 MR. HOSIE: Thank you. Just, I don't need to  
 24 preserve my record by asking if you'll stipulate that any  
 25 such question will draw the same instruction?

17 (Pages 62 to 65)

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<p>1           MR. DOUGLAS: If you wish to ask him about any  2 question -- any exhibit, I would instruct him not to answer.  3           MR. HOSIE: Thank you.  4           Q. (BY MR. HOSIE) Mr. Gates, in your e-mail you  5 summarize a call you had on February 25th with Andy Grove;  6 correct?  7           A. That's what it appears I'm doing in this e-mail,  8 yes.  9           Q. And you say, "I called Andy today to talk to him  10 about our sensitivities about Java ..." .  11           Do you see that, sir?  12           A. That's not the whole sentence.  13           Q. That's the part I read. Did I read that correctly?  14           A. You read a partial sentence correctly.  15           Q. What were your sensitivities about Java?  16           MR. DOUGLAS: Objection to the form and foundation.  17           A. As I've said, we were doing some things related to  18 Java and our competitors were doing some things related to  19 Java, and so we were interested in seeing if there were some  20 common views about the Java phenomena. In this mail I say,  21 you know, we got into a discussion of the whole Java  22 phenomena. He thinks the role of IBM is the most interesting  23 element here. He thinks mutually we need to do a better job  24 competing with Sun. Sun's one of the companies that's  25 involved with Java activities.</p>	<p>Page 66</p> <p>1           Q. And I mean, I think you're personally on record as  2 saying that Andy Grove is one of the most perspicacious and  3 capable high tech executives in your experience?  4           A. I don't think I ever called his perspicacious, but  5 I used very positive superlatives to talk about Andy and the  6 work he did.  7           Q. Not perspicacious but equally superlative?  8           A. I'm not sure what equally superlative means.  9 Superlative certainly.  10           Q. And then the third paragraph from the bottom said,  11 "Andy's offer was that he would get his best people together  12 (3 to 4 total) and we would do the same and we could sit down  13 and talk about what is going on. He is going to check with a  14 lawyer first to make sure it's okay to have this kind of  15 talk."  16           Did that meeting actually happen, sir, do you know?  17           A. I don't know. I know there were lots of meetings  18 related to what was going on in the industry, and one of the  19 things going on in the industry was what we all, various  20 companies did related to Java.  21           (Deposition Exhibit No. 11 was marked  22 for identification.)  23           Q. (BY MR. HOSIE) Let me show you what's been marked  24 as Exhibit 11. It is another e-mail thread. Mr. Gates, I'm  25 going to ask you about one paragraph. As a courtesy I'll</p>
<p>1           Q. (BY MR. HOSIE) Sure.  2           A. And so, you know, we wanted to understand, as it  3 says here, we wanted to get some people together to talk  4 about what's going on, see if these are things that mutually  5 weaken or strengthen the things that Microsoft and Intel can  6 do together. And so it's about getting more dialogue on  7 these topics going with Intel.  8           Q. On the topic of more dialogue, third paragraph you  9 say, "He," he being Grove, "said Gelsinger made an offer when  10 they went through what they were doing to have us tell them  11 what they should be doing and that Ludwig had not sent  12 anything in response."  13           Do you recall Andy Grove making the point to you  14 that Gelsinger of Intel had already offered to John Ludwig to  15 have Microsoft tell Intel what they should be doing?  16           MR. DOUGLAS: Objection to the form and foundation.  17           A. No. They would listen to our advice. They  18 wouldn't follow it very uniformly, but it appears that the  19 guy was open to getting our advice.  20           Q. (BY MR. HOSIE) Intel's a very big company in 1997;  21 correct?  22           A. Big and absolute and very big relative to  23 Microsoft.  24           Q. And a sophisticated company?  25           A. In general, yes.</p>	<p>Page 67</p> <p>1 tell you what it is. It's the second paragraph from the  2 bottom on the second page which is in the body of an e-mail  3 you wrote to a whole series of folks at Microsoft on  4 Wednesday, April 9th.  5           A. Okay.  6           Q. First, sir, please identify that this is in fact in  7 part an e-mail you sent on April 9th to Paul Maritz and  8 others at Microsoft.  9           A. Yeah, it appears to be a mail I'm sending to a  10 number of Microsoft executives, including Paul, about  11 discussions I had with Andy Grove of Intel.  12           Q. Right. And I think you begin by saying, "I had a  13 good meeting with Andy on Tuesday night."  14           A. Yeah, and this is a long piece of e-mail.  15           Q. It is, it's a dense e-mail. That would have been a  16 face-to-face meeting, sir?  17           MR. DOUGLAS: Objection to the form and preamble,  18 by the way.  19           A. Yeah, I believe this is talking about a  20 face-to-face meeting, yes.  21           Q. (BY MR. HOSIE) Now if we could turn to the  22 paragraph I've flagged for you on the second page.  23           A. What's the third, fourth, fifth, sixth, seventh,  24 eighth, ninth, tenth paragraph on that page?  25           Q. Or more efficiently, second from the bottom.</p>

18 (Pages 66 to 69)

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<p style="text-align: right;">Page 70</p> <p>1 A. Okay.    2 Q. You had a chance to read this paragraph?    3 A. Yes.    4 Q. Do you recall Mr. Grove asking you where Microsoft    5 was drawing the line on Java?    6 A. We can read this paragraph into the record if you    7 want.    8 Q. Do you recall him saying that to you, sir?    9 A. I remember that we discussed Java in many different    10 meetings. The particular question about drawing the line,    11 no.    12 Q. Would you have written this if in fact he hadn't    13 communicated that thought to you in substance?    14 A. But you didn't read the sentence.    15 Q. My question, sir, would you have written this –    16 A. Why don't – if you want to ask about a sentence in    17 the e-mail, don't just take two words, just read the sentence    18 and then we can talk about it.    19 Q. Well, have you read the sentence, sir?    20 A. Yes, sir.    21 Q. Do you accurately capture you believe what    22 Mr. Grove communicated to you?    23 A. I'm sure I tried to. This is a summary of a very    24 long meeting, but, you know, as I look at this paragraph, it    25 looks like I was summarizing some discussion about Java-</p>	<p style="text-align: right;">Page 72</p> <p>1 Framework, this has to do with MPEG-4. And I think this is    2 still an issue as we speak today in terms of what byte codes    3 are going to be used by these -- the MPEG-4 related standard    4 side. I don't think that was ever resolved.    5 Q. What was the issue, Mr. Gates?    6 A. Oh, it's just the question of when international    7 standards are done like this, if people had intellectual    8 property related to it; is it available under RAND terms,    9 which the IP that Sun had was not available to us under RAND    10 terms. And so it would have meant that the MPEG-4 standard    11 was something that we weren't on an equal footing like    12 international standards generally provide for us to implement    13 that in our products.    14 Q. Who was Charles Fitzgerald?    15 A. A person who works at Microsoft.    16 Q. All right, sir. Now, Mr. Fitzgerald says, and I    17 quote, "the Intel multimedia people are still complete    18 fucking coconuts. Turns out they are driving Java into the    19 MPEG standard and defend it even after being confronted."    20 Sir, do you know anything about who confronted    21 Intel about driving Java into the MPEG standard?    22 A. No.    23 Q. Now, John Ludwig responds to this mail, does he    24 not?    25 A. Yes.</p>
<p style="text-align: right;">Page 71</p> <p>1 related topics.    2 Q. Okay. And you conclude by saying you think a    3 meeting is a good idea in the next month, do you not?    4 A. I wouldn't call that a conclusion, it's one of the    5 things I note. I say, "I think we need to do this meeting    6 with Intel in the next month. Paul would have to be there    7 but I would not have to be."    8 Q. Do you recall if that meeting ever came about?    9 A. No.    10 (Deposition Exhibit No. 12 was marked    11 for identification.)    12 Q. (BY MR. HOSIE) Let me show you what's been marked    13 as Exhibit 12.    14 A. Okay.    15 Q. For the record, Exhibit 12 is another e-mail    16 thread. You are added as a recipient on the final e-mail,    17 are you not, sir, top of the page?    18 A. Yes.    19 Q. And do you recall seeing this e-mail before?    20 A. No.    21 Q. Do you recall an issue in 1997 with Intel trying to    22 drive Java into the MPEG standard?    23 A. Yes.    24 Q. What was the issue, sir?    25 A. This is nothing to do with the Java Multimedia</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. And he says, and I quote, "this is a disaster of    2 the first order," closed quote.    3 Did you agree, sir, that Intel trying to drive Java    4 into MPEG was a disaster of the first order for Microsoft?    5 MR. DOUGLAS: Objection to the form.    6 A. No, I think that's too strong. As I said, it's not    7 related to Java runtime work, this is related to intellectual    8 property in an international standard.    9 Q. (BY MR. HOSIE) You personally thought it was    10 critically important to stop Intel trying to drive Java into    11 MPEG; correct?    12 A. No.    13 MR. DOUGLAS: Objection to the form.    14 A. This is about whether an international standard can    15 be licensed under RAND terms and Intel messing up    16 potentially. But as I say, I don't think anything ever    17 happened on this in the sense that the international    18 standards people realized that they didn't have the right    19 type of license grant to drive this technology because they    20 didn't have a commitment for RAND licensing. But this is    21 not -- this is related to a standard, a format standard.    22 This is not about software.    23 Q. (BY MR. HOSIE) I know, Mr. Gates. Let me ask my    24 question again.    25 Did you not personally feel that Intel trying to</p>

19 (Pages 70 to 73)

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1 drive Java to be part of MPEG-4 was very important from  
 2 Microsoft's perspective?

3 MR. DOUGLAS: Same objection, plus it's been asked  
 4 and answered, and argumentative.

5 A. I knew that at some point the international  
 6 standard people would realize they had an intellectual  
 7 property problem because they have a series of check points  
 8 where before they really finalize something they make sure  
 9 the stuff is available on a RAND basis. And so even though  
 10 some Intel people had confused the issue by proposing certain  
 11 things there, I didn't think there was that much likelihood  
 12 that specific issue wouldn't get resolved.

13 Q. (BY MR. HOSIE) So you weren't concerned?

14 A. It wasn't a big issue for me personally.

15 Q. Let me show you what's been previously marked as  
 16 Exhibit 13, Mr. Gates.

17 (Deposition Exhibit No. 13 was marked  
 18 for identification.)

19 Q. (BY MR. HOSIE) I'm going to ask you, sir, about  
 20 your e-mail in the middle of the first page, dated May 13,  
 21 1997, 11:15 a.m.

22 A. Okay.

23 Q. Is this an e-mail you wrote, sir?

24 A. It appears to be, yes.

25 Q. Sent to David Cole and others at Microsoft?

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1 e-mail thread that ends with an e-mail from Mr. Gates to John  
 2 Ludwig, categories MMEDIA, stamped Attorneys Eyes Only on the  
 3 bottom.

4 Mr. Gates, I'm going to ask you about your final  
 5 e-mail to John Ludwig and Aaron and Ben, as well as Paragraph  
 6 4 on the Some Questions attached on the second page.

7 A. (Witness reading document.) Okay.

8 Q. Sir, you sent the last e-mail out on May 14, 1997,  
 9 did you not?

10 A. Right.

11 Q. To John Ludwig, amongst others; correct?

12 A. Uh-huh.

13 Q. And the subject is MMEDIA. What does that mean?

14 A. Probably multimedia.

15 Q. That's how you would read that?

16 MR. DOUGLAS: Actually, it says subject is DirectX  
 17 and Talisman Update.

18 Q. (BY MR. HOSIE) Categories, MMEDIA.

19 A. Actually, that's unusual that there's a Categories  
 20 line there, but anyway, the subject is DirectX and Talisman.

21 Q. And the category is MMEDIA. You would read that as  
 22 multimedia?

23 A. Yeah, but I'm confused now whether that's something  
 24 that somebody added. I don't remember ever seeing a  
 25 Categories line like that. That's confusing.

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1 A. That's right.

2 Q. And you say, and I quote, "Did we resolve the issue  
 3 where Intel wanted to have Java be part of MPEG-4? This is  
 4 an issue I would be glad to call Andy on - it's that  
 5 important."

6 Have I read that correctly, sir?

7 A. That's right.

8 Q. Have I read the entirety of your e-mail?

9 A. Yeah. I enclosed David Cole's e-mail, but yes.

10 Q. Does this refresh your recollection that you  
 11 personally believed Intel trying to have Java be part of  
 12 MPEG-4 was important enough for you to personally call Andy  
 13 Grove?

14 A. It's clear I was willing to make that call.

15 MR. HOSIE: Why don't we take a break. Off the  
 16 record.

17 VIDEO OPERATOR: The time is 2:40 p.m. This  
 18 concludes Tape No. 1 in the deposition of Bill Gates.

19 (Recess taken.)

20 VIDEO OPERATOR: The time is 2:53 p.m. This begins  
 21 Tape No. 2 in the deposition of Bill Gates.

22 (Deposition Exhibit No. 14 was marked  
 23 for identification.)

24 Q. (BY MR. HOSIE) Mr. Gates, let me show you what's  
 25 been marked as Exhibit 14. For the record, Exhibit 14 is an

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1 Q. Your second paragraph says, "I did stick a few"  
 2 open quote, 'barb,' closed quote, "comments into that e-mail  
 3 about cross-platform which I should have avoided but it's a  
 4 key topic that has me worried."

5 What was it about cross-platform that had you  
 6 worried, sir?

7 A. What e-mail is being referred to?

8 Q. Your e-mail below at the bottom of the page, sir.

9 A. I don't think so.

10 Q. You don't think so? Did you have a chance to read  
 11 the e-mail at the bottom of the page that carries over to  
 12 Page 2?

13 A. Yeah, but that's all about Talisman. I think  
 14 there's another e-mail about cross-platform. It says that —  
 15 see, Ludwig's mail is about cross-platform.

16 Q. Yes, X platform.

17 A. But it's on top of the Talisman-related mail.

18 Q. So you think there's another e-mail here with some  
 19 barb comments from you about cross-platform?

20 A. Well, Ludwig says, "right now the only  
 21 communication I have with you about some of these issues is  
 22 as a sidebar in mail like below."

23 So what he's saying is that he thinks he's getting  
 24 sidebar comments that are confusing him and he'd like to meet  
 25 with me.

20 (Pages 74 to 77)

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1 Q. Fair enough. And, Mr. Gates, you may be right,  
 2 there may in fact be another e-mail with barbed comments from  
 3 you about cross-platform, but if there is we just don't have  
 4 it.

5 MR. DOUGLAS: Objection to the form.

6 Q. (BY MR. HOSIE) So let me ask you to turn to the  
 7 second page, sir. This is another e-mail from you, is it  
 8 not?

9 A. This is one focused on Talisman, yes.

10 Q. And you sent it out on May 13, 1997?

11 A. That's right.

12 Q. And have you had a chance to read Paragraph 4?

13 A. Yeah.

14 Q. You wrote Paragraph 4, sir?

15 A. Yes.

16 Q. These are your words?

17 A. The words I used in this e-mail, yes, that's what  
 18 it appears.

19 Q. You say, and I quote, "The Java platform is the  
 20 greatest threat to us ..." And let me stop there.

21 Did you personally believe that the Java platform  
 22 was the greatest threat to Microsoft as of May 1997?

23 MR. DOUGLAS: Objection to form and foundation.  
 24 Incomplete sentence.

25 A. In terms of what people were doing that was

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1 view at the time?

2 MR. DOUGLAS: Objection to form. Incomplete  
 3 sentence.

4 A. It says, "We will NOT be doing OPEN Java animation  
 5 or graphics work despite what the cross-platform promoters  
 6 want us to do."

7 Q. (BY MR. HOSIE) What was the problem with having  
 8 that be cross-platform, sir?

9 MR. DOUGLAS: Objection to form and foundation.

10 A. Well, I'm glad to speculate. I'm not sure exactly  
 11 what I meant when I wrote this sentence.

12 Q. (BY MR. HOSIE) It has no meaning to you as you  
 13 read it now, sir?

14 A. No, I can say that in general the whole  
 15 cross-platform thing is, do you do work primarily on Windows  
 16 and make Windows more attractive or do you do it on multiple  
 17 systems. And some things we choose to do on multiple  
 18 systems, like we did our browser and Internet Explorer on  
 19 UNIX and many other systems, and some things we choose to  
 20 focus, just put all the resources on doing the best we can on  
 21 top of Windows. And I appear to suggest here at least at  
 22 this point I didn't think we should do what I call open Java  
 23 animation or graphics work on non-Windows systems.

24 Q. Who were the cross-platform promoters, as you think  
 25 back?

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1 directly competitive with the Talisman software layers, yes,  
 2 and in many other respects. But in this mail, which is about  
 3 Talisman, I say in Paragraph 4, "What kind of work is going  
 4 on with Java in this area," which is Talisman; "I saw they  
 5 endorsed a particular audio approach," that is some group of  
 6 Java backers. "The Java platform is the greatest threat to  
 7 us so I want to make sure they don't benefit from any of our  
 8 work and we stay ahead of them."

9 Q. (BY MR. HOSIE) Could you read the next sentence,  
 10 please?

11 A. "We will NOT," capital N-O-T, "be doing," quote,  
 12 "OPEN Java animation or graphics work despite what the  
 13 cross-platform promoters want us to do."

14 Q. In what sense was Java's work in this area the  
 15 greatest threat to Microsoft?

16 MR. DOUGLAS: Same objection.

17 A. In the sense that to the degrees our competitors  
 18 did innovative work, that people would see that as  
 19 potentially -- if they did better work than we did then  
 20 they'd get ahead, they'd get more software developers, they'd  
 21 be more successful. And so a lot of this deep Talisman type  
 22 activity in the industry were by people who were supporting  
 23 particular Java runtime.

24 Q. (BY MR. HOSIE) Now, the second sentence you read,  
 25 "we will NOT not be doing OPEN Java," was that your personal

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1 A. Good question.

2 Q. Would you consider this a barbed comment, sir?

3 MR. DOUGLAS: Objection to the form.

4 A. No.

5 Q. (BY MR. HOSIE) So you think the barbed comments  
 6 you refer to in your memo of Wednesday, May 14th must be in  
 7 some other e-mail?

8 A. I'm not sure.

9 Q. Sir, as of May 1997, did Microsoft have as a goal  
 10 getting Intel to drop its involvement in interactive MPEG-4?

11 MR. DOUGLAS: Objection to the form. Vague and  
 12 ambiguous.

13 A. Are you saying that we didn't want them to have any  
 14 involvement of any kind in MPEG-4?

15 Q. (BY MR. HOSIE) Was it a goal of yours, sir, to  
 16 stop Intel from driving Java into the MPEG-4 standard?

17 A. We had a goal to make sure that we could license  
 18 the intellectual property around MPEG-4 on reasonable and  
 19 non-discriminatory terms. And we had a concern that Intel or  
 20 anyone else who put the Java stuff in there, that would  
 21 create the problem that we wouldn't be able to license MPEG-4  
 22 and create the interoperability.

23 Q. So you're saying yes with that explanation, you had  
 24 that goal?

25 MR. DOUGLAS: Objection to the form. That

21 (Pages 78 to 81)

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<p>1 mischaracterizes the testimony.</p> <p>2 A. No, I'm not -- we had a concern that people trying 3 to put Java in there would prevent it from being licensable 4 to us under reasonable and non-discriminatory terms. And 5 Intel was one of the people, I don't know whether in May but 6 in that general time frame, where we said, hey, if you're 7 going to put this technology into this standard, there's a 8 problem because it's not available to us on reasonable and 9 non-discriminatory terms.</p> <p>10 Q. (BY MR. HOSIE) Was it a goal of yours to persuade 11 Intel to stop helping Sun create Java Multimedia APIs, 12 especially ones that ran well, i.e., native applications on 13 Windows?</p> <p>14 MR. DOUGLAS: Objection to form. Overbroad.</p> <p>15 A. Intel was always going to decide exactly what it 16 wanted to do. We shared with Intel why we thought some Java- 17 related activities on their part were against their own 18 interests and we explained our own Java strategy.</p> <p>19 Q. (BY MR. HOSIE) Didn't you personally threaten 20 Intel if it didn't stop its work on certain aspects of Java?</p> <p>21 MR. DOUGLAS: Objection to the form.</p> <p>22 A. No.</p> <p>23 Q. (BY MR. HOSIE) That never happened, Mr. Gates?</p> <p>24 A. No.</p> <p>25 MR. DOUGLAS: Objection. Plus it's argumentative.</p>	<p>Page 82</p> <p>1 something that might happen in the future.</p> <p>2 Q. Sure. But thinking back now, you don't recall the 3 meeting that's referenced here, do you?</p> <p>4 A. I know I met with Andy a number of times. I know I 5 met with Intel groups with and without Andy a number of 6 times. But a specific meeting that might be referred to 7 here, no.</p> <p>8 Q. You say in your mail to Jim Allchin and others that 9 you want to convince Intel that they need to stay away from 10 Oracle NCs. Do you see that, sir?</p> <p>11 A. Are you going to read the whole sentence?</p> <p>12 Q. Well, let me stop there and ask you, what's an 13 Oracle NC? Or more accurately, what in early 1997 was your 14 understanding of an Oracle NC?</p> <p>15 A. I'm not sure what they ever shipped, to be frank. 16 Sun shipped some things they called NCs, but I think the 17 Oracle project self-destructed before it ever shipped. So 18 it's very different than various Java things where aspects of 19 Java did, some we supported, some we didn't become popular. 20 NCs actually were a complete bust in the marketplace and many 21 proposed things never got in the marketplace. If Oracle NCs 22 did get in the marketplace it's in minuscule numbers where 23 they never really finished it.</p> <p>24 Q. And you just told me that the Oracle NC never was a 25 commercial success, but my question actually was a little</p>
<p>Page 83</p> <p>1 (Deposition Exhibit No. 16 was marked 2 for identification.)</p> <p>3 Q. (BY MR. HOSIE) Mr. Gates, let me show you what's 4 been marked as Exhibit 16. Counsel, copy for you.</p> <p>5 A. (Witness reading document.) Okay, what's the 6 question?</p> <p>7 Q. Sir, I'd like to first direct your attention to the 8 e-mail from you in the middle of the page, Sunday, October 9 12. You sent it to Jim Allchin and Marshall Brumer and 10 others.</p> <p>11 A. Right.</p> <p>12 Q. You wrote this e-mail?</p> <p>13 A. It appears to be an e-mail from me, yes.</p> <p>14 Q. And you reference a critical meeting coming up with 15 Intel?</p> <p>16 A. Yes.</p> <p>17 Q. And that would be a meeting with Andy Grove, do you 18 believe?</p> <p>19 A. I'd just be guessing. The e-mail doesn't suggest.</p> <p>20 Q. Don't guess, sir. I take it you have no 21 independent recollection of this e-mail?</p> <p>22 A. No.</p> <p>23 Q. Do you have any independent recollection of the 24 meeting you reference here?</p> <p>25 A. No. At least as of the mail, it appears to be</p>	<p>Page 85</p> <p>1 different, Mr. Gates.</p> <p>2 A. Okay.</p> <p>3 Q. And let me put it again, which is specifically, 4 what as you recall was an Oracle NC as of early 1997?</p> <p>5 A. Well, when you ask me about a product, I think 6 about, okay, what did they eventually ship. Here Oracle was 7 making a lot of noise about what they were going to do in the 8 NC, and so we can go back and look at what they were saying, 9 why they thought it was good, what they were saying they were 10 going to go after. But even, you know, in those early 11 announcement days they changed what they were talking about, 12 and then there was no concrete product success that came out 13 of that.</p> <p>14 Q. Sir, you reference here an Oracle NC, do you not?</p> <p>15 A. It's the Oracle NC announcements and discussions. 16 As of this time I'm pretty sure there was no such product, 17 that Oracle was talking about doing some work.</p> <p>18 Q. And what product did you have in mind when you 19 reference an Oracle NC in this e-mail you typed yourself?</p> <p>20 MR. DOUGLAS: Objection to form and foundation 21 because it doesn't necessarily reference a specific product. 22 It talks about Oracle NCs.</p> <p>23 A. Yeah, Oracle was definitely talking about a 24 strategy of having these very thin network computers.</p> <p>25 Q. (BY MR. HOSIE) So these would be the thin ones</p>

22 (Pages 82 to 85)

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1 with no multimedia capacity or what you earlier described as  
 2 a medium fat?  
 3 A. I'm not sure what at this point they were talking  
 4 about. They eventually shipped something that was very thin,  
 5 and I think that was just in beta or I don't know if it was  
 6 final. I know they got enough customer feedback that the  
 7 whole thing fell apart.  
 8 Q. Okay. You've given me your best recollection as  
 9 you sit here now?  
 10 A. Yes.  
 11 Q. Why did you want to convince Intel to stay away  
 12 from Oracle NCs as of May 1997, Mr. Gates?  
 13 MR. DOUGLAS: Objection to form and foundation.  
 14 A. Our view was that we should try and convince them  
 15 to do what it says here, which is work more closely with  
 16 Microsoft.  
 17 Q. (BY MR. HOSIE) My question was a little different.  
 18 Why did you want them to stay away from Oracle NCs?  
 19 MR. DOUGLAS: Objection to the form and foundation  
 20 because the language of the document is that they need to  
 21 stay away.  
 22 Q. (BY MR. HOSIE) Are you more comfortable if I use  
 23 that formulation? I will, let me ask it that way.  
 24 A. No, when you misquote the e-mail it's not a  
 25 question of comfort.

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1 Windows CE onto their processors. That was our opinion.  
 2 Q. You say here, "I will send separate mail to the  
 3 groups who focus on low end, Java and NCs to get their  
 4 input." Correct?  
 5 A. To the different groups, yes.  
 6 Q. Do you believe you actually sent the mail you  
 7 reference here?  
 8 A. I don't know.  
 9 Q. At the bottom of the page, sir, if you could please  
 10 read the first sentence in the carryover paragraph aloud into  
 11 the record. It begins, "I want them..."  
 12 A. (Witness reading document.) Okay. You're saying  
 13 at the bottom?  
 14 Q. Yeah.  
 15 A. It says, "I want them to understand that helping  
 16 NCs and Java will push us to do Windows and other software  
 17 Sun byte codes even if we don't rewrite them in Java."  
 18 Q. And the "them" is Intel, is that not true, sir?  
 19 A. Yes.  
 20 Q. And you wanted Intel to understand that if Intel  
 21 was helping NCs and Java, that might push Microsoft to do  
 22 Windows and other software in Sun byte codes; correct?  
 23 MR. DOUGLAS: Objection to the form.  
 24 A. Yeah, that was a possibility, that if byte codes  
 25 got popular enough we'd feel customer demand to do our

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1 Q. Why did you want to convince Intel that they needed  
 2 to stay away from Oracle NCs?  
 3 MR. DOUGLAS: You still -- still same objection.  
 4 You still leave the last part of the sentence off, "and work  
 5 more closely with Microsoft."  
 6 A. We thought it would be advantageous if Intel chose  
 7 to work with us and focus on things that we were doing.  
 8 Q. (BY MR. HOSIE) You go on to say, "I will have to  
 9 spend some time reviewing the low end and how they screwed  
 10 us..."  
 11 Do you see that, sir?  
 12 A. Uh-huh.  
 13 Q. By "the low end" you mean the very thin, simple  
 14 network computer client?  
 15 A. No.  
 16 Q. What do you mean?  
 17 A. I mean their arm strategy.  
 18 Q. Explain, please.  
 19 A. This is below a PC, like a hand-held PDA or pocket  
 20 device, and they had recently gotten into chips for that.  
 21 Q. And how had they screwed you there, sir?  
 22 A. Well, we had done a product called Windows CE which  
 23 runs on these machines -- it actually runs on some of those  
 24 thin devices but mostly it runs on pocket-sized devices. And  
 25 they had not given us good support in terms of getting

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1 software in that form.  
 2 Q. (BY MR. HOSIE) And did you in fact make Intel  
 3 understand that if Intel persisted in helping NCs and Java,  
 4 Microsoft might do software in Sun byte codes?  
 5 A. No, no, no.  
 6 Q. Did you communicate that thought to them, sir?  
 7 A. No. The point is that if there's customer demand  
 8 for it, we might need to do it.  
 9 Q. My question was different, Mr. Gates. Did you  
 10 communicate this thought to anyone at Intel, you personally?  
 11 MR. DOUGLAS: Objection to the form.  
 12 A. You're mixing up issues. To the degree that those  
 13 things, that byte codes catch on and are popular, that's  
 14 going to create a demand on us to support those.  
 15 Q. (BY MR. HOSIE) My question, sir. Did you  
 16 communicate to anyone at Intel, you personally, that if Intel  
 17 persisted in helping NCs in Java, Microsoft might write  
 18 software in Sun byte codes? Yes or no, sir?  
 19 A. We certainly told them that if those byte codes  
 20 became popular enough, then it would increase customer demand  
 21 and we might have to respond to that.  
 22 Q. That was not my question. I'll ask it one last  
 23 time, sir.  
 24 A. Okay.  
 25 Q. If you don't want to answer it I'll move on.

23 (Pages 86 to 89)

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1 Did you ever communicate to Intel that if Intel  
 2 persisted in helping NCs in Java, Microsoft might start  
 3 writing software in Sun byte codes? Did you ever say that to  
 4 them, sir?

5 MR. DOUGLAS: Objection to the form of the  
 6 question, the preamble, and it's been asked and answered.

7 A. First of all, it's not about rewriting software.  
 8 You're confusing the issue. It's about the form we ship it  
 9 in. It's not about rewriting stuff. As it says very  
 10 clearly, this isn't rewriting in Java.

11 Q. (BY MR. HOSIE) You're right, ship it in Sun byte  
 12 codes. Let me ask my question --

13 A. Right.

14 Q. -- again, sir.

15 Did you ever communicate to Intel the notion that  
 16 if Intel persisted in helping NCs in Java, that Microsoft  
 17 might have to ship software in Sun byte codes? Did you say  
 18 that to them?

19 MR. DOUGLAS: Same objection.

20 A. There's nothing in here about persisted. What it  
 21 says in here is, I want them to understand that helping NCs  
 22 and Java, because they'll increase the demand for this, for  
 23 those things, that demand will push us to do Windows and  
 24 other software in Sun byte codes.

25 Q. (BY MR. HOSIE) And did you communicate that

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1 Andy Grove, listen, Andy, if you continue to support Java and  
 2 NC, we are going to retaliate and ship our product in Sun  
 3 byte codes, which would be very bad for you, Intel, that  
 4 would be a threat?

5 MR. DOUGLAS: Objection to the form, foundation,  
 6 the argumentative nature of the question, and the pounding on  
 7 the table.

8 Q. (BY MR. HOSIE) I apologize for my emphasis, sir,  
 9 but I feel this is an important question. Do you have it in  
 10 mind?

11 A. Is this some hypothetical?

12 Q. Yes.

13 A. I think Andy would have been utterly confused by  
 14 that statement.

15 Q. My question. Would you consider that a threat,  
 16 sir, you personally?

17 MR. DOUGLAS: Same objection.

18 A. It's -- I don't really understand what you're  
 19 asking me. I think if anybody had said that from Microsoft,  
 20 Intel would have been confused by it.

21 Q. (BY MR. HOSIE) Would you consider it a threat,  
 22 Mr. Gates?

23 MR. DOUGLAS: Same objection. Asked and answered.

24 Q. (BY MR. HOSIE) Your answer, please, sir?

25 A. I'm not sure what I'd consider it, but it's not.

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1 thought to anyone at Intel?

2 A. The general notion that whatever was being  
 3 popularized we would have to respond to. I'm sure Intel was  
 4 aware of that.

5 Q. Isn't this a threat, sir? Didn't you very directly  
 6 tell Intel more than once that, listen, Intel, if you don't  
 7 stop supporting Java and NC, we may well start writing our  
 8 software in Sun byte codes, which would be very bad for you,  
 9 Intel?

10 A. No.

11 MR. DOUGLAS: Objection to form and foundation.

12 Q. (BY MR. HOSIE) You never made that threat, sir?

13 MR. DOUGLAS: Hold on a minute. Objection. Form,  
 14 foundation, and now it's just argumentative.

15 Q. (BY MR. HOSIE) You never made that threat?

16 A. No.

17 Q. You'd agree with me that if you had said that, it  
 18 would be a threat; correct?

19 MR. DOUGLAS: Objection. Argumentative.

20 A. First of all, you keep saying write software in Sun  
 21 byte codes. It's about the form we ship it in.

22 Q. (BY MR. HOSIE) Fine, the form you ship it in.

23 A. Yeah, which is not -- we can ship it in different  
 24 forms.

25 Q. Mr. Gates, you'd agree with me that had you said to

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1 something that I ever communicated.

2 Q. And that's because it's a pretty blatant threat, is  
 3 it not?

4 A. No.

5 MR. DOUGLAS: Objection. You're just arguing with  
 6 the witness. Let's go on to something else. Mr. Gates --

7 A. I don't think you understand what it means for us  
 8 to ship the things in byte codes. You're acting like that's  
 9 some kind of big deal.

10 Q. (BY MR. HOSIE) Well, let me ask you this. If you  
 11 had shipped Microsoft code in byte codes, Sun byte codes,  
 12 what would that have meant for the Intel microprocessor  
 13 business?

14 MR. DOUGLAS: Objection to the form, foundation,  
 15 it's hypothetical.

16 A. I don't think it would be a big deal.

17 Q. (BY MR. HOSIE) You a couple times today said you  
 18 were very concerned about Intel's well-being, you thought  
 19 they were doing things that were injurious to their own best  
 20 interests.

21 A. I said that Intel sometimes is doing things we  
 22 thought were against Intel's own best interests.

23 Q. Right. A form of altruism on your part?

24 A. No, no. It happened that in some cases the things  
 25 that Intel was doing that we thought were against its own

24 (Pages 90 to 93)

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1 interests also were things that we thought were not helpful  
 2 in terms of how they allocated their resources or to things  
 3 we were interested in.  
 4 Q. Right, because --  
 5 A. And so just like Intel would often share their  
 6 opinions about what they saw in the marketplace, what they  
 7 thought would be fruitful activity, we did the same with  
 8 them. And then both of us decided exactly what we would do.  
 9 Q. And so let me ask you, sir, my question again.  
 10 If Microsoft started shipping Microsoft code in Sun byte  
 11 codes, what would that have meant, if anything, to the  
 12 microprocessor business for Intel?  
 13 MR. DOUGLAS: Same objection to the last --  
 14 A. I don't think it would have been a big deal.  
 15 Q. (BY MR. HOSIE) You don't think it would have led  
 16 to the potential commoditization of the Intel microprocessor?  
 17 MR. DOUGLAS: Same objection.  
 18 A. The microprocessor business has always been a  
 19 competitive business.  
 20 (Deposition Exhibit No. 17 was marked  
 21 for identification.)  
 22 Q. (BY MR. HOSIE) Let me show you our next in order,  
 23 sir.  
 24 MR. DOUGLAS: By the way, you went from 14 to 16.  
 25 MR. HOSIE: Yeah, I'm holding some of them back to

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1 A. Yes.  
 2 Q. And you're responding to a mail from Andy Grove to  
 3 you; correct?  
 4 A. That's right.  
 5 Q. And what's the subject of Mr. Grove's mail, please?  
 6 A. It's about some Windows CE related issues.  
 7 Q. I earlier asked you about Navio and you said you  
 8 didn't know what it was. Does refreshing -- I'm sorry, does  
 9 reading Mr. Grove's e-mail refresh your recollection of what  
 10 Navio was?  
 11 A. He clearly references a thing called Navio, but I  
 12 still don't know what it is.  
 13 Q. What's Mr. Grove talking about here, sir?  
 14 A. Agenda.  
 15 Q. And he's talking about a set top computer running  
 16 Navio and another running WinCE; correct?  
 17 A. He's talking about the demonstrations he's going to  
 18 give at Agenda, and then he lists apparently some things  
 19 about what he's going to show.  
 20 Q. And one of the things he was going to show was a  
 21 set top computer running Navio; correct? Isn't that what he  
 22 says?  
 23 A. Well, those are the words there. We still don't  
 24 know what Navio was and I bet he didn't know either.  
 25 Q. Was Navio a Microsoft product?.

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1 add a sense of drama.  
 2 THE WITNESS: Fifteen, huh? I'm waiting for 15.  
 3 MR. DOUGLAS: Fifteen may have been one that  
 4 somebody discussed with you before.  
 5 MR. HOSIE: Exactly, 15 may be one of the nine.  
 6 We'll never know and it'll bother me for months, Chuck.  
 7 Q. (BY MR. HOSIE) Sir, I've marked another e-mail as  
 8 Exhibit 17. And actually, I'm going to ask you about the  
 9 second page which I think is the same as the first page with  
 10 one additional e-mail attached.  
 11 A. Yep.  
 12 Q. Do you recall this e-mail, sir? And by e-mail I  
 13 mean thread or string.  
 14 A. Not specifically. It appears to be an e-mail from  
 15 me.  
 16 Q. If you could turn to the second page, please.  
 17 A. Uh-huh.  
 18 Q. I've added this because Mr. Roberts responds to  
 19 your e-mail. Do you see that at the top?  
 20 A. I do.  
 21 Q. All right, sir. You have a general recollection, I  
 22 suspect, of this exchange?  
 23 A. No.  
 24 Q. The middle of the page has an e-mail from you to  
 25 Andy Grove, does it not?

1 A. I don't think so, but I don't know what it is. To  
 2 be frank, every word in the dictionary I think we've used as  
 3 a code name at one time or another, but I don't think -- I  
 4 don't recollect that one.  
 5 Q. Fair enough. And of course you know what WinCE is?  
 6 A. Yes.  
 7 Q. And that is a Microsoft product?  
 8 A. Yes.  
 9 Q. And he goes on to say that the set top box running  
 10 Navio is working great, whereas the box running WinCE is not  
 11 very exciting; correct?  
 12 MR. DOUGLAS: Objection to the form.  
 13 A. Well, I think the words speak for themselves.  
 14 Q. (BY MR. HOSIE) That's what they say?  
 15 A. No. As usual, you've skipped a whole bunch, but.  
 16 Q. In substance, sir?  
 17 A. It's very readable. Do you want me to read it?  
 18 Q. I want you to tell me what it means to you,  
 19 Mr. Gates.  
 20 A. It says he's got demos and one of them is not very  
 21 exciting.  
 22 Q. Which one is not very exciting?  
 23 A. Real 2.0.  
 24 Q. And that's the Windows product; right?  
 25 A. Windows CE which is not Windows.

25 (Pages 94 to 97)

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1 Q. Right, Windows CE.  
 2 A. Windows CE is not a PC operating system.  
 3 Q. I understand that, sir, but this is a Microsoft  
 4 product?  
 5 A. For non-PC things, yes.  
 6 Q. And so you respond to Mr. Grove's e-mail the very  
 7 next day; correct?  
 8 A. Yeah, that's right.  
 9 Q. And you first say, "I'll see what I can do on the  
 10 demonstration." And then you go on, do you not?  
 11 A. That's right.  
 12 Q. And you say, "One thing I need some help on is to  
 13 understand your tentative NC plans."  
 14 Have I read that correctly?  
 15 A. Uh-huh, you did.  
 16 Q. And then you go on and say, "Will Swoope came and  
 17 presented a plan that had a \$500 and \$700 NC which were  
 18 cheaper than the NetPC." Correct?  
 19 A. Right.  
 20 Q. Does this refresh your recollection that Will  
 21 Swoope was indeed an Intel person?  
 22 A. Gosh, I told you that I thought he was an Intel  
 23 person before.  
 24 Q. You did, but you were --  
 25 A. And you said I was right.

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1 A. Whenever Intel did hardware plans it was of  
 2 interest to us.  
 3 Q. That's all?  
 4 MR. DOUGLAS: Objection to the form.  
 5 A. Knowing Intel's plans was often interesting to us.  
 6 It would affect our plans.  
 7 Q. (BY MR. HOSIE) In the second paragraph you go on  
 8 to say, "Our whole plan had been to tell people to write  
 9 applications assuming the latest Intel processor."  
 10 Do you see that?  
 11 A. Uh-huh.  
 12 Q. And then you go on to say at the end of the  
 13 paragraph, and I quote again, "However" --  
 14 A. I don't know why you're skipping around.  
 15 Q. Well, that's because I have a question in mind that  
 16 I'm building toward, how's that? Can I ask my question, sir?  
 17 A. Why do you read discontinuous pieces of the e-mail?  
 18 Q. Because I have three hours of your time, Mr. Gates,  
 19 and if I didn't do that I would get nowhere near done.  
 20 A. Okay. Well, I've read the whole e-mail.  
 21 Q. Good. I asked you to, did I not, sir?  
 22 A. And I obeyed.  
 23 MR. DOUGLAS: Is there a question?  
 24 MR. HOSIE: There is, we're building to a question.  
 25 I was responding to Mr. Gates and his criticism of my

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1 Q. But you weren't quite sure. And rather than me  
 2 having to testify, I want to ask you, does this confirm your  
 3 tentative belief of earlier today that in fact Will Swoope  
 4 was an Intel person?  
 5 A. I think it's increasingly likely that Will Swoope  
 6 worked for Intel.  
 7 Q. I suppose I'll take that, okay.  
 8 All right. What was a NetPC, please?  
 9 A. I think we worked on a joint specification with  
 10 Intel and others for a low cost PC that had all the  
 11 advantages of a PC and yet had a lot of simplicity and was  
 12 very inexpensive.  
 13 Q. TCO or ZAW ring a bell in that context?  
 14 A. Well, those are industry buzz words. TCO means  
 15 total cost of ownership, ZAW means zero administration  
 16 workstation.  
 17 Q. And this was all mixed in in your notion to build a  
 18 Windows PC type box?  
 19 A. No, everybody talks about TCO and ZAW. That's not  
 20 related specifically to Windows in any way. Everybody wants  
 21 low TCO, low total cost of ownership, and zero administration  
 22 workstations. And so everybody competes in order to deliver  
 23 those desirable characteristics.  
 24 Q. Okay. Why was it important to you to understand  
 25 Intel's tentative NC plans?

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1 questioning style, if you will.  
 2 Q. (BY MR. HOSIE) The last sentence of that e-mail,  
 3 "However Intel seems now to think exposing APIs on cheap  
 4 clients and directing development there is a good idea."  
 5 What are you saying there, Mr. Gates?  
 6 A. There's always been this question of the degree to  
 7 which software developers will assume new features in  
 8 software and hardware. And for Intel, getting to the right  
 9 applications that need high performance processors is very  
 10 key to their business model, because they basically in one  
 11 period of years have to say to you, oh, you know, your one  
 12 megahertz machine is dumb, get a 10 megahertz machine. But  
 13 then three years later they have to say, oh, you have that 10  
 14 megahertz machine? No, you need the 100 megahertz machine.  
 15 And now it's gigahertz; one gigahertz, two gigahertz, three  
 16 gigahertz.  
 17 And so this is always an interesting question for  
 18 software developers. Do they aim for the cheapest PC and  
 19 therefore not do things that would require a high performance  
 20 processor or do they do very advanced things. And so getting  
 21 an understanding of how quickly is Intel raising the clock  
 22 rate, how quickly are they lowering the price on their high  
 23 performance processors, understanding what their message is  
 24 going to be, we were always interested in that, because we  
 25 likewise are meeting with software developers saying, hey, we

26 (Pages 98 to 101)

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1 think you should do applications that take advantage of the  
 2 latest software. So it makes sense to me, yes.

3 Q. Did you like Intel's drive toward exposing APIs on  
 4 cheap clients?

5 MR. DOUGLAS: Objection to the form. Vague.

6 Q. (BY MR. HOSIE) You personally, Mr. Gates?

7 A. It's part of Intel's strategy today just like it's  
 8 part of our strategy to support what's called Windows  
 9 Terminal Server. If they make that a main thrust, it works  
 10 against their interests.

11 Q. And yours?

12 A. Actually, yeah, there is somewhat of a synergy in  
 13 that to the degree you buy a new processor, you typically buy  
 14 more memory and it makes you more open minded to buy the  
 15 latest version of either the Windows or the Office software.  
 16 And so throughout the history of the PC, as we've gotten more  
 17 powerful machines we've developed Windows to take advantage  
 18 of that, people have developed applications to take advantage  
 19 of that. And it's this virtual cycle that has led to lower  
 20 cost PCs, more powerful software and, you know, the whole  
 21 personal computer phenomena.

22 Q. Sir, aren't you basically saying here, listen,  
 23 Intel, you're exposing APIs on cheap clients, this is exactly  
 24 the platform threat that you were concerned about?

25 MR. DOUGLAS: Objection to the form.

1 very bad thing for Microsoft; true or false?

2 A. The ones from Oracle and Sun were competitive to  
 3 us. We actually had some as part of our strategy that were  
 4 purely thin and didn't have the JBM and some that did have  
 5 that capability, so if people bought our flavors of those  
 6 things, that wouldn't affect us at all. To the degree they  
 7 chose the competitive products, yes, that's something that we  
 8 were competing for that business, and it's all a matter of  
 9 degree of volume. But we wanted to offer a product that was  
 10 better.

11 Q. And you wanted Intel to stop its work in support of  
 12 NCs with a Java runtime; correct?

13 MR. DOUGLAS: Objection to the form. Vague and  
 14 ambiguous.

15 A. No. In fact, as we did the license with Sun for  
 16 various Java things, Intel saw us working in the Java area,  
 17 we had a particular view about what we were doing with Java  
 18 and what we weren't doing that we shared with Intel. And  
 19 sometimes, you know, they thought that was interesting and  
 20 sometimes they didn't.

21 Q. (BY MR. HOSIE) You go on here to say, "The byte  
 22 codes controlled by Sun will eliminate the compatibility  
 23 problems of running software on different microprocessors."

24 What are you referring to here, sir?

25 A. Just processor independence. Byte codes are

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1 A. No. Both Intel and Microsoft have low end clients  
 2 as part of their strategy.

3 Q. (BY MR. HOSIE) Your last paragraph you make the  
 4 comment, "One of the interesting things about NCs/Java is the  
 5 byte codes."

6 Do you see that, sir?

7 A. Uh-huh.

8 Q. Why are you talking about NCs/Java here?

9 A. There are some NCs that were not the pure NCs that  
 10 had some byte code capabilities, very limited in the sense  
 11 that things like high end multimedia typically wouldn't work  
 12 on those things. But some of them had local byte code  
 13 execution environment.

14 Q. Java runtime?

15 A. Yeah, Java byte code execution.

16 Q. Okay. And you were concerned that if those NCs  
 17 became popular, that would be a very serious platform threat  
 18 to Microsoft indeed?

19 MR. DOUGLAS: Objection to form and foundation.

20 A. No, anything that becomes popular is competition.  
 21 So NCs, the ones that Microsoft wasn't involved in, were  
 22 competition, and things where you built an operating system  
 23 other than Windows, that was competition.

24 Q. (BY MR. HOSIE) Okay. My question, Mr. Gates. If  
 25 NCs using Java runtime became very popular, that would be a

1 different than native code. You can always abstract software  
 2 up one level away from the processor. That's a technique  
 3 that's been around for a long time.

4 Q. And would eliminating the compatibility of problems  
 5 of running software on different microprocessors as you  
 6 viewed it be a good or a bad thing for Intel?

7 MR. DOUGLAS: Objection to the form. Ambiguous.

8 A. It would help Intel with their Itanium processor  
 9 that ran a different instruction set. It would also be kind  
 10 of neutral relative to AMD. If other people had really good  
 11 price performance it might be helpful to them.

12 Q. (BY MR. HOSIE) You go on to say, "We are assuming  
 13 that someone at Intel has decided that it is okay to endorse  
 14 byte codes."

15 You're being somewhat tongue in cheek, are you not,  
 16 sir?

17 A. No. No, in fact, Intel was very involved in --  
 18 parts of Intel, in things where they would take Java and  
 19 compile it to byte codes.

20 Q. You go on to say, "We didn't think byte codes made  
 21 sense but since the call from Gelsinger we have been looking  
 22 at this a whole new way."

23 Have I read that correctly?

24 A. Uh-huh.

25 Q. Do you recall a conversation you had with a Pat

27 (Pages 102 to 105)

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1 Gelsinger about byte codes at Intel?  
 2 A. No.  
 3 Q. And then your last -- I'm going to skip a sentence,  
 4 okay?  
 5 A. Okay.  
 6 Q. The last sentence, "One breakthrough involves the  
 7 ability to ship software in C, Visual Basic - all Microsoft  
 8 software in byte codes very easily in the next 6 months."  
 9 What are you saying there, sir?  
 10 A. I'm saying that we've used byte codes throughout  
 11 the history of Microsoft. When we wanted to squeeze software  
 12 down into different environments we've used byte codes, and  
 13 so we've always had various tools that relate to byte codes.  
 14 Q. Isn't this a direct threat, sir?  
 15 A. No.  
 16 Q. Okay. Could you please read aloud into the record  
 17 Mr. Roberts' response to your mail?  
 18 A. You don't want to read it?  
 19 Q. I'd like you to read it, Mr. Gates.  
 20 A. Okay.  
 21 Q. Unless you really don't want to, in which case I  
 22 will as a courtesy.  
 23 A. That's okay. What was his job?  
 24 Q. Do you know Mr. Roberts?  
 25 A. I know -- I don't know what he did.

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1 Q. He worked at Microsoft, did he not, sir?  
 2 A. He did, but what -- in what group?  
 3 Q. He sent you this e-mail, did he not, sir?  
 4 A. It appears he did, but I'm curious if you have any  
 5 background on what role he had in the company.  
 6 Q. And if you could please read this into the record.  
 7 A. Okay.  
 8 Q. Thank you, Mr. Gates.  
 9 MR. DOUGLAS: And I object, then, to all of that  
 10 discussion which you didn't want to give the witness what he  
 11 was asking for background and context for the questions  
 12 you're going to ask him.  
 13 Mr. Gates, the question is, read it, please read it  
 14 for Mr. Hosie.  
 15 A. Okay. "This is a great piece of e-mail. It is not  
 16 a rant, but a very logical dissection of the issue with the  
 17 threat of thermal nuclear war very well and politely  
 18 delivered."  
 19 Q. (BY MR. HOSIE) Mr. Gates, you see no threat in  
 20 your e-mail at all, do you?  
 21 A. Absolutely none.  
 22 Q. And you think Mr. Roberts is just out to lunch?  
 23 MR. DOUGLAS: Objection to the form.  
 24 Q. (BY MR. HOSIE) Let me rephrase in a less  
 25 colloquial fashion. You think Mr. Roberts just profoundly

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1 misunderstood the message you were sending to Mr. Grove?  
 2 A. You better ask Mr. Roberts what he meant. It's a  
 3 non sequitur when attached to this piece of e-mail.  
 4 (Deposition Exhibit No. 18 was marked  
 5 for identification.)  
 6 Q. (BY MR. HOSIE) Let me show you what I've marked as  
 7 No. 18, Mr. Gates. Let's go off the record and give you a  
 8 chance to read this. Off the record, please.  
 9 VIDEO OPERATOR: The time is 3:35 p.m. We'll be  
 10 taking a break.  
 11 (Discussion off the record.)  
 12 (Recess taken.)  
 13 VIDEO OPERATOR: The time is 3:41 p.m., we're now  
 14 back on the record.  
 15 Q. (BY MR. HOSIE) Mr. Gates, I wonder if you might  
 16 take a moment on the record and review what I've marked as  
 17 Exhibit 18. Specifically, I'm going to ask you about  
 18 Mr. Brumer's summarization of the meeting you had at Intel  
 19 and ask you whether you agree or disagree with his  
 20 summarization.  
 21 A. Well, his summary's a very long summary talking  
 22 about things that happened seven years ago now.  
 23 Q. Would you like me to --  
 24 A. And the notion that I could agree or disagree with  
 25 this, that's asking quite a bit. I haven't read it yet, I

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1 have to admit.  
 2 Q. Well, let me ask this, sir. Do you recall making a  
 3 lengthy presentation to Intel's strategic long range planning  
 4 group in 1997?  
 5 A. Yeah, I know I made a presentation, I don't know  
 6 the time but around that time they got a group of executives  
 7 together. I don't remember the name, but apparently that was  
 8 their name for the group.  
 9 Q. All right, sir. And this is a presentation that  
 10 you handled personally for Microsoft?  
 11 A. Yeah, I made a presentation in person, personally.  
 12 Q. And you understand that Mr. Brumer has forwarded to  
 13 you for your review Mr. Brumer's summary of that  
 14 presentation?  
 15 A. Well, I'm seeing those words that he sent to me  
 16 seven years ago.  
 17 Q. And in his first paragraph Mr. Brumer says that the  
 18 meeting was very cordial -- I'm in the middle of the first  
 19 paragraph, Mr. Gates. "The meeting was very cordial with  
 20 both sides keeping most emotions in check."  
 21 Is that your recollection of the meeting, sir?  
 22 A. I don't recall.  
 23 Q. And then he says, "The only real flareup was at the  
 24 end when Bill" -- you would be that Bill, sir?  
 25 A. Uh-huh.

28 (Pages 106 to 109)

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1 Q. -- "when Bill clearly articulated our" -- that  
 2 would be Microsoft?  
 3 A. Right.  
 4 Q. -- "concerns about their" -- that would be Intel?  
 5 A. Yes.  
 6 Q. -- "work on STB" -- that would be set top box?  
 7 A. That's right, completely non-related to PCs.  
 8 Q. I understand -- "and NC" -- that would be network  
 9 computer?  
 10 A. Right.  
 11 Q. -- "all happening at the same time to heat things  
 12 up at MS and make us wonder whether we should be pulling away  
 13 from work with Intel."  
 14 Sir, do you remember communicating to this group of  
 15 senior Intel executives that their, Intel's, work on STB and  
 16 NC was making Microsoft wonder whether Microsoft should be  
 17 pulling away from work with Intel?  
 18 MR. DOUGLAS: Objection to the form and foundation.  
 19 A. I know in the case of set top box work there was a  
 20 real question of whether there should be any work between  
 21 Intel and Microsoft or not because we had different  
 22 strategies on set top boxes. And clearly that's talking  
 23 about the confusion around set top boxes and network  
 24 computers and what -- do we have any common goals at all in  
 25 those two spaces.

1 remember what the three parts are.  
 2 Q. That was my next question. Mr. Brumer says that  
 3 "Clear direction that Microsoft was not okay with Java as a  
 4 platform for all the standard reasons."  
 5 Did you say at this meeting that Microsoft was not  
 6 okay with Java as a platform?  
 7 A. No, I think I -- what I did is I gave our three  
 8 part Java positioning.  
 9 Q. Okay, so you're saying you did not say that  
 10 Microsoft was not okay with Java as a platform?  
 11 A. Well, Java's a platform.  
 12 Q. Microsoft okay with Java as a platform is what I  
 13 said, sir.  
 14 A. I don't remember any specific things in the  
 15 meeting. We had competitors using Java in a way that, you  
 16 know, was out in the marketplace competing with us, and that  
 17 was a topic of discussion.  
 18 Q. And he goes on to say, "for all the standard  
 19 reasons."  
 20 What are the standard reasons why Microsoft was not  
 21 okay with Java as a platform, Mr. Gates?  
 22 A. Well --  
 23 MR. DOUGLAS: Objection to form and foundation.  
 24 A. We had competitors that were offering non-Windows  
 25 solutions, some of which relied on Java, including parts of

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1 Q. (BY MR. HOSIE) And NC, sir? Do you recall saying  
 2 if they continued the work on NC, Microsoft would have to  
 3 consider pulling away from their work with Intel?  
 4 A. No. The question is whether there's joint work  
 5 together related to network computers or is there joint work  
 6 together related to set top boxes. The set top box thing is  
 7 interesting because we really tried to communicate with Intel  
 8 and we ended up largely on different strategies, and so some  
 9 work we had started with Intel no longer made sense. In  
 10 fact, I don't know if it's in this time frame but about this  
 11 time frame we actually did pull back from some set top work  
 12 we were doing with Intel and actually do that work with  
 13 Motorola.  
 14 Q. If you would turn to the second page, please.  
 15 A. Okay.  
 16 Q. There is a series of paragraphs, three specifically  
 17 under the Java heading. Do you see that?  
 18 A. I'm just reading it.  
 19 Q. Yeah, if you could, please.  
 20 A. (Witness reading document.) Okay.  
 21 Q. Mr. Brumer says that you gave, Microsoft, three  
 22 part Java positioning. Do you recall giving a three part  
 23 Java positioning?  
 24 A. No. It shows the whole thing of what we were doing  
 25 on Java and what we weren't was fairly complex, but I don't

1 Java that we didn't think would deliver on the things that  
 2 they said that Java would do. And so, you know, it's just  
 3 classic competition in the software space.  
 4 Q. (BY MR. HOSIE) And Marshall Brumer goes on to say,  
 5 "Gelsinger said that he thinks we are now in sync on Java  
 6 although Bill still sees them supporting their Java MM-Libs."  
 7 Do you see that, sir?  
 8 A. Uh-huh.  
 9 Q. That would be Java Multimedia Libraries?  
 10 A. I think so.  
 11 Q. Do you recall Gelsinger telling you at the date of  
 12 this meeting that Intel now thought it was in sync with  
 13 Microsoft on Java?  
 14 A. No.  
 15 Q. And do you remember remaining concerned that Intel  
 16 was still supporting Java Multimedia Libraries?  
 17 A. It doesn't say that. It says "Bill still sees them  
 18 supporting."  
 19 Q. Yeah, and my question was did that concern you,  
 20 that support for Java Multimedia Libraries?  
 21 A. I don't recall that. What Marshall says in  
 22 recounting the meeting is it said that "Bill still sees them  
 23 supporting their Java Multimedia Libraries."  
 24 Q. And did you see them supporting their Java  
 25 Multimedia Libraries?

29 (Pages 110 to 113)

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1 A. I don't recall.  
 2 Q. Do you think he got it wrong?  
 3 MR. DOUGLAS: Objection to the form.  
 4 A. I don't know.  
 5 Q. (BY MR. HOSIE) Let me rephrase. Do you have any  
 6 reason to believe that Mr. Brumer mischaracterized your views  
 7 at the time, sir?  
 8 A. No.  
 9 Q. Can you recall why you thought that Intel was still  
 10 supporting its Java Multimedia Libraries?  
 11 MR. DOUGLAS: Objection to form and foundation.  
 12 A. I don't know why. Intel gets to decide exactly  
 13 what they do and why they want to do it.  
 14 Q. (BY MR. HOSIE) It's not a situation, your  
 15 relationship, Microsoft's relationship with Intel, where you  
 16 get to tell Intel what to do?  
 17 MR. DOUGLAS: Objection to form. Overbroad.  
 18 A. I'm sure some people would tell them what to do but  
 19 that wasn't what they would do. You know, there's a high  
 20 level of —  
 21 Q. (BY MR. HOSIE) Independence?  
 22 A. — independence between these companies.  
 23 Q. As there should be.  
 24 (Deposition Exhibit No. 19 was marked  
 25 for identification.)

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1 Was that your view then, sir?  
 2 A. I don't recall. This talks about Intel's low end  
 3 work, and apparently when I wrote this I felt relative to low  
 4 end stuff there was a crisis.  
 5 Q. With Intel?  
 6 A. Yes.  
 7 Q. Okay. You go on to say, "If they" — the "they"  
 8 would be Intel?  
 9 A. Yes.  
 10 Q. "If Intel goes ahead with their NC plans we  
 11 certainly won't be working with them on Windows CE and most  
 12 other things as well."  
 13 That's what you said, Mr. Gates, is it not?  
 14 A. That's what the sentence says, yes.  
 15 Q. Was that your view at the time, sir?  
 16 A. I don't recall. This is apparently related to low  
 17 end things. I felt like there was a course of action that  
 18 would have us working separately.  
 19 Q. Okay. And do you have any reason to believe that  
 20 this e-mail which you wrote yourself somehow inaccurately  
 21 captured your thoughts as of October 14, 1997?  
 22 MR. DOUGLAS: Objection to the form.  
 23 A. It appears to be an e-mail I wrote.  
 24 Q. (BY MR. HOSIE) Okay. And in this e-mail you  
 25 wrote, you go on to say, "Until I say so" — that would be

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1 Q. (BY MR. HOSIE) Sir, let me show you what's been  
 2 marked as Exhibit 19. I'm going to be principally asking you  
 3 about the e-mail you wrote on October 14, 1997, it's at the  
 4 bottom of the page. You wrote it to a whole series of folks  
 5 at Microsoft. Why don't you take a minute and read that,  
 6 please.  
 7 A. Okay.  
 8 Q. This is an e-mail you wrote?  
 9 A. The second one is.  
 10 Q. These are your words?  
 11 A. No. The first mail's not mine, the second one is.  
 12 Q. And that's the one I asked you to read, is it not,  
 13 sir?  
 14 A. Yeah, it appears to be an e-mail from me.  
 15 Q. Okay. And the subject of the e-mail, please?  
 16 A. "Re: Intel Visit, quick recap." But that's not my  
 17 subject. Do you understand how that works?  
 18 Q. I do, thank you, Mr. Gates. You're joining a  
 19 thread with a preexisting subject line and you have a change  
 20 in subject?  
 21 A. Right, so I have no subject.  
 22 Q. You are just joining a thread?  
 23 A. Exactly.  
 24 Q. I do understand that. You say, "Two critical  
 25 points: 1, we are crisis mode with Intel."

1 you, Bill Gates, the "I," correct?  
 2 A. Where are you reading?  
 3 Q. Paragraph 1 under your two critical points.  
 4 A. Oh, yeah, sure.  
 5 Q. "Until I say so every conversation with Intel  
 6 should say that you have been told that we are reevaluating  
 7 all of our work with them based on their NC plans and what  
 8 happened on the set top box issue."  
 9 Did you tell people at Microsoft to pass on to  
 10 Intel that Microsoft was reevaluating all of its work with  
 11 Intel based on Intel's NC plans?  
 12 A. Well, this is sent to the people who are working on  
 13 a specific set of products.  
 14 Q. And you told these folks to tell Intel that  
 15 Microsoft was reevaluating all of its work with Intel based  
 16 on Intel's NC plans; correct?  
 17 A. Yeah, I'm not sure what scope of work I'm talking  
 18 about there, but that is what I say.  
 19 Q. That's a threat, is it not, sir?  
 20 A. No.  
 21 MR. DOUGLAS: Objection to the form.  
 22 Q. (BY MR. HOSIE) Turn to the next page, please. The  
 23 last paragraph of your e-mail, and I'll read it aloud. "My  
 24 view is that if Intel thinks people are that cheap then we  
 25 should make sure we support byte codes with all our software

30 (Pages 114 to 117)

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1 so that any processor can be used."

2 That's another threat, is it not, Mr. Gates?

3 A. Absolutely not.

4 MR. DOUGLAS: Same objection.

5 A. You're very much misconstruing what's going on in

6 this conversation. When you get down to very low cost chips,

7 Intel's not as competitive. Where they're very competitive

8 is in high performance chips. If all you want is low

9 performance then it becomes more important for us to support

10 other microprocessors. As you move up to the higher end then

11 really taking full advantage of the work Intel does, that's

12 important.

13 But where -- processor independence has always been

14 important in this set top box area. And that's -- you know,

15 there's a chain here about what's going on in the set top box

16 thing where we're reacting to, as I say, what happened on the

17 set top box issue. And in that area the idea of allowing

18 cheaper processors is something that customers were

19 demanding.

20 Q. (BY MR. HOSIE) And not a good thing for Intel?

21 A. The low end stuff has never been a big deal for

22 Intel. It never -- that's not a significant part of what

23 goes on for them.

24 Q. So you're saying it's not devastating, but still

25 directionally it would not be a good thing for Intel? You

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1 A. No.

2 Q. Well, he's sending an e-mail to senior executives

3 here, is he not?

4 A. Like everyone does.

5 Q. Let me ask you this, Mr. Gates. Would you disagree

6 with Mr. Roberts' characterization that Microsoft had entered

7 into a Cold War with Intel?

8 A. Yes. Either that or you'd have to call our entire

9 history of our relationship with Intel, you know, some

10 hyperbole like that. The point of complete agreement was

11 never reached.

12 Q. The next sentence intrigues me, sir.

13 A. Where are we now?

14 Q. Oh, still back in the Jonathan Roberts' Cold War

15 with Intel mail.

16 A. His second sentence?

17 Q. Yeah. Could you read that aloud into the record,

18 please?

19 A. I think you should get Jonathan, if you want

20 somebody to read Jonathan's mail the best way possible.

21 Q. Well, this is a mail he sent to you, correct,

22 amongst others?

23 A. I'm copied on mail from him. We're still not sure

24 what group he's in.

25 Q. Well, Mr. Gates, if you're not comfortable, I'm

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1 would agree with that?

2 MR. DOUGLAS: Objection to the form.

3 A. I'm saying that we would respond to the demand

4 customers had to use different cheap processors.

5 Q. (BY MR. HOSIE) Then you see Mr. Roberts is on the

6 thread, joins on October 14, 1997?

7 A. Well, you're -- are you going backwards in time?

8 Q. I am.

9 A. Okay, that's confusing, but go ahead.

10 Q. And he says, "We have entered into a Cold War with

11 Intel." Does he not?

12 A. Yeah. Once again, I'm interested. What area was

13 he working in at Microsoft?

14 Q. Well, let's explore that, sir. Look at the people

15 he's sending his mail to. He sends it to Adam Taylor,

16 correct?

17 A. And what area did he work in?

18 Q. Do you know Adam Taylor?

19 A. No.

20 Q. He sent it to Bill Gates. That would be you?

21 A. Yep.

22 Q. And he sent it to Paul Maritz?

23 A. Yeah, but that's high up the chain. What area did

24 he work in? He's not an executive or anything.

25 Q. He's not an executive.

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1 happy to read it. Let me do so.

2 A. No, I'm comfortable.

3 Q. You sure?

4 A. Either way.

5 Q. If you could read it, please.

6 A. I'm good at reading.

7 Q. I gather you are, sir.

8 A. It's what you brought me here for.

9 "The only way to maintain our current largely

10 favorable relationship is to clearly outline mutually assured

11 destruction."

12 Q. Do you have any idea of what Mr. Roberts was

13 referring to here, sir?

14 MR. DOUGLAS: Objection. Form and foundation.

15 A. No.

16 Q. (BY MR. HOSIE) Isn't the threat you communicated

17 earlier that if Intel persisted in supporting NC and Java,

18 you would ship Microsoft code in byte codes?

19 MR. DOUGLAS: Same objection.

20 A. No. That wouldn't have been a big deal to Intel.

21 (Deposition Exhibit No. 20 was marked

22 for identification.)

23 Q. (BY MR. HOSIE) I'll show you what's been marked as

24 Exhibit 20, Mr. Gates.

25 MR. HOSIE: How's my time?

31 (Pages 118 to 121)

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1 VIDEO OPERATOR: 2.5.

2 Q. (BY MR. HOSIE) For the record, Exhibit 20 is an  
3 e-mail from Marshall Brumer to Jim Allchin, Bill Gates and  
4 others, dated October 5, 1997.5 Sir, my questions will principally relate to an  
6 e-mail you wrote which is on the second page in the middle of  
7 the thread. But please read the whole thing if you'd like.

8 A. (Witness reading document.) Okay.

9 Q. Sir, you wrote this e-mail Saturday, October 4th,  
10 did you not?

11 A. It appears I did, yes.

12 Q. And this is another case where you just incorporate  
13 some preexisting subject line?14 A. Yeah. I'm replying to a mail that Craig Mundie  
15 wrote.16 Q. Okay. Your middle paragraph you say, "I am going  
17 to speak to the Intel exec staff at an offsite they are  
18 having on October 22."

19 That's the meeting we were just discussing?

20 A. Yeah, I think so.

21 Q. And you say, "This will be when I explain their  
22 future is tied to, a) fighting byte codes b) working with us  
23 on natural interface and new low end things," and another b),  
24 "working with us on Merced. Versus going off to do Oracle  
25 NCs and STBs."

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1 to my intensity sometimes.

2 Q. (BY MR. HOSIE) You said people characterize you.  
3 Sir, here you're describing your own state of mind, are you  
4 not?5 MR. DOUGLAS: Objection. Form and argumentative.  
6 A. There's a piece that I am -- yeah, okay, what  
7 Craig's talking about here is the set top box work, and that,  
8 there was so much miscommunication. That one I state very  
9 explicitly, related to set top boxes, which has nothing to do  
10 with multimedia, video, not a thing to do with any of those  
11 things. I'm saying that I'm angry about the  
12 miscommunication.13 (Deposition Exhibit No. 21 was marked  
14 for identification.)15 Q. (BY MR. HOSIE) At some point, sir, did you learn  
16 that Intel had decided to walk away from the Oracle NC  
17 project?

18 A. I'm not sure.

19 Q. Let me show you what's been marked as Exhibit 21.

20 A. (Witness reading document.) Okay, what's the  
21 question?22 Q. Well, for the record, this Exhibit 21 is an e-mail  
23 thread that has in it an e-mail on the first page from Paul  
24 Fox to you and others, dated October 16, 1997. Do you see  
25 that?

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1 Is that the message you communicated at your  
2 presentation?

3 A. No.

4 Q. Your e-mail inaccurately summarizes what you in  
5 fact did at the presentation, sir?6 A. Well, I think you'd want to look at the meeting  
7 notes from that meeting if that's what you're interested in.8 Q. Did you ask Intel at this meeting to go away from  
9 Oracle NCs and STBs?10 A. We explained what our strategy for competing with  
11 Oracle NCs were and what we were doing, and we probably made  
12 some requests for ways that we could work together on the  
13 Microsoft piece.14 Q. Okay. And you were angry with Intel about its  
15 behavior at this juncture, were you not, sir?

16 MR. DOUGLAS: Objection to the form.

17 A. From time to time people characterized me as angry,  
18 and throughout the history of the relationship with Intel I  
19 was certainly one of the people who felt that Intel wasn't  
20 coordinating its activities as well as it should. And, you  
21 know, whether you tie that to an emotional phrase or not, I  
22 know somebody who saw how hard core I was in the way I ran  
23 Microsoft and in talking about the things we should do,  
24 always made terms like I was being emotional about it. I  
25 wouldn't use that term, but that's the way people responded

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1 A. I do.

2 Q. And it says that, "Intel has backed down to DEFCON  
3 2."

4 A. Yeah.

5 Q. What does that mean to you, sir?

6 A. No idea. It's probably something to do with  
7 whenever things go well with Intel, somebody uses a reverse  
8 hyperbole.9 Q. Okay. And in this reverse hyperbole, Mr. Pat Fox  
10 reports that Intel's agreed to 90 percent of what Microsoft  
11 wants?

12 A. That's what it says in the e-mail.

13 Q. Was that your understanding at the time, sir?

14 A. I don't remember this episode very specifically.

15 Q. Who was Pat Fox?

16 A. Don't know.

17 Q. And he goes on to say, "This is a result of their  
18 meeting with Andy this morning."

19 A. Who are "they"?

20 Q. Well, that's my question, who are "they"?

21 MR. DOUGLAS: Objection. Form and foundation.

22 A. There's something funny here because in the second  
23 sentence "they" appears to be Intel. Oh, maybe there was an  
24 internal meeting at Intel. I'm confused about that.

25 Q. (BY MR. HOSIE) Wouldn't you read it that way, sir,

32 (Pages 122 to 125)

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1 that there was an internal meeting at Intel with senior staff  
 2 of Andy Grove, and as a function of that meeting with Andy,  
 3 Intel agreed to 90 percent of what Microsoft wanted?  
 4 MR. DOUGLAS: Objection to the form.  
 5 A. I don't know.  
 6 Q. (BY MR. HOSIE) Is that how you would read it, sir?  
 7 MR. DOUGLAS: Objection. Form and foundation.  
 8 A. Let me look at the rest of this.  
 9 Q. (BY MR. HOSIE) If you could.  
 10 A. (Witness reading document.) Yeah, I think he means  
 11 that there's some — a different "they" which is another set  
 12 of Intel people.  
 13 Q. Meeting with Andy Grove of Intel?  
 14 A. That's my guess, yes.  
 15 Q. All right, fair enough. And through this e-mail  
 16 from Mr. Fox you learn of this and you learn that Mr. Fox at  
 17 least reports that Intel has now agreed to 90 percent of what  
 18 Microsoft wants; correct?  
 19 A. Well, yeah, apparently there was some notion  
 20 relative to low end things that we had a proposal in to them  
 21 that they still didn't like completely.  
 22 Q. And you were told that Intel no longer wants to do  
 23 an NC; correct?  
 24 A. I think it's much more a question of whether they  
 25 used that term. I think if you look at this e-mail thread,

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1 A. Yeah, the thin versus thick continuum.  
 2 Q. So the WBT, which is the thinnest of the thin,  
 3 "would have NO local processing, NO browser, NO JVM"?  
 4 A. That's what his mail says.  
 5 Q. And that was good news from your perspective,  
 6 Mr. Gates?  
 7 MR. DOUGLAS: Objection to the form.  
 8 A. There's always been devices in the market that are  
 9 at that extreme end both from us and from our competitors,  
 10 and so the fact that Intel — the fact here that he's saying  
 11 we're more in line on some activities, yeah, that's probably  
 12 a good thing, but it's not a big thing.  
 13 Q. (BY MR. HOSIE) Let's go to the e-mail right above.  
 14 It's from Adam Taylor responding to Pat Fox and also sent to  
 15 you.  
 16 A. It's actually below it.  
 17 Q. In a chronological sequence it's later in time and  
 18 it's higher on the page as it's printed out here.  
 19 A. Oh, I'm sorry, I was going in the wrong direction.  
 20 Q. Yeah. So you're now looking at the e-mail from  
 21 Adam Taylor to Pat Fox and you and others?  
 22 A. That's right.  
 23 Q. And he says, Adam Taylor — do you know Adam?  
 24 A. No.  
 25 Q. Mr. Taylor says, "Great work turning them around,

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1 Intel is still doing pretty much the notion of a low end  
 2 device that some people would call an NC. But as you'll see  
 3 in the e-mail thread, we didn't like them using the term NC  
 4 because we thought that would be confused with another thing  
 5 that didn't use an Intel processor.  
 6 So I think what he means here is that they won't  
 7 use that term, and then there's this whole thing about the  
 8 bill of materials. They're basically doing the same thing,  
 9 they're just not positioning it as an NC.  
 10 Q. The second bullet point, sir, "They want to do a  
 11 terminal reference design ('rich terminal') with WinCE as  
 12 preferred implementation." Correct?  
 13 A. That's what it says.  
 14 Q. That's what you learned from this e-mail back in  
 15 October of 1997?  
 16 A. Apparently so, yes.  
 17 Q. Then the next bullet point, their WPD — I'm sorry,  
 18 WB as in bravo, T. What's that an acronym for, sir?  
 19 A. In this spectrum, this mail's talking about doing  
 20 multiple points on the spectrum, one of which would have a  
 21 browser in JVM and one of which wouldn't. And the WBT  
 22 appears to be the very truth, the thinnest, all the way at  
 23 the end of the spectrum.  
 24 Q. And by spectrum, you're referring to what we  
 25 earlier described as the continuum?

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1 Pat (with thanks to Bill's mail I suspect)."  
 2 What mail is that, Mr. Gates?  
 3 A. I'm not sure.  
 4 MR. DOUGLAS: Objection to form and foundation.  
 5 Q. (BY MR. HOSIE) Don't you think it could be that  
 6 October e-mail where you say, gee, I'm not sure why you all  
 7 think cheap clients are a good thing but, you know,  
 8 incidentally, we can ship everything in Sun byte codes in six  
 9 months?  
 10 MR. DOUGLAS: Objection to form, plus you're asking  
 11 him to speculate.  
 12 A. What was the date of that e-mail?  
 13 Q. (BY MR. HOSIE) It was slightly earlier in October.  
 14 A. I don't know. It would just be speculation. If  
 15 the date was after, I'd speculate one way.  
 16 Q. Fair enough. Mr. Gates, if the date were after I  
 17 wouldn't have asked you the question.  
 18 A. Okay, good job.  
 19 (Deposition Exhibit No. 22 was marked  
 20 for identification.)  
 21 Q. (BY MR. HOSIE) Let me show you what's marked as  
 22 Exhibit 22, Mr. Gates. Counsel, copy for you. For the  
 23 record, Exhibit 22 is another e-mail thread. This one is  
 24 forwarding an article from InfoWorld and Eric Rudder whom I  
 25 believe was your TA as of this time, forwards it to you,

33 (Pages 126 to 129)

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1 Mr. Gates, on November 25, 1997.  
 2 A. Right.  
 3 Q. Have you had a chance to read the e-mail from  
 4 Mr. Rudder to you?  
 5 A. I did.  
 6 Q. And he's referring to this attached InfoWorld  
 7 report, is he not?  
 8 A. That's right.  
 9 Q. And Mr. Rudder says to you, "I know you" -- that  
 10 would be Mr. Gates, you?  
 11 A. Me.  
 12 Q. Yeah. "I know you," Bill Gates, "talked about this  
 13 with Gelsinger."  
 14 That would be Pat Gelsinger of Intel?  
 15 A. Right.  
 16 Q. "It's sad that Intel is delivering 'branded' java  
 17 beans."  
 18 A. He's sad.  
 19 Q. Yeah. Then he goes on to say, "Even if they had a  
 20 'commitment,' in quotes, "this is still kind of an odd  
 21 announcement."  
 22 Now, what commitment is he referring to here, sir?  
 23 MR. DOUGLAS: Objection. Form and foundation.  
 24 Q. (BY MR. HOSIE) I'll rephrase. Mr. Gates, isn't it  
 25 true that Intel made a commitment to Microsoft at about this

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1 the multimedia work at Intel.  
 2 Q. What was said in your conversation with Gelsinger?  
 3 A. I don't have any specific recollection, but I've  
 4 been in many meetings with Pat Gelsinger about various  
 5 software topics, including video Codecs and realtime  
 6 activities, all sorts of things.  
 7 Q. Did you not have a conversation with Mr. Gelsinger  
 8 where he said, we'll make the commitment to drop Java in JMF  
 9 except insofar as we have preexisting commitments to  
 10 customers?  
 11 MR. DOUGLAS: Objection to form and foundation.  
 12 A. Intel never made any such commitment to us.  
 13 Q. (BY MR. HOSIE) You never had an agreement with  
 14 Intel, sir, along those lines?  
 15 MR. DOUGLAS: Same objection.  
 16 A. They made their plans, we made our plans.  
 17 Q. (BY MR. HOSIE) Intel is a rational economic  
 18 enterprise, is it not, sir?  
 19 A. Imperfect.  
 20 Q. As are so many of us. But generally speaking, you  
 21 would view Intel as a rational economic enterprise, would you  
 22 not?  
 23 MR. DOUGLAS: Objection to the form.  
 24 A. They -- I'm not sure what you mean by that. Intel  
 25 certainly does things that I think have been mistakes,

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1 time that it would drop its Java work, including JMF, except  
 2 as it had preexisting commitments to companies?  
 3 MR. DOUGLAS: Same objection.  
 4 Q. (BY MR. HOSIE) Is that not true, sir?  
 5 A. Intel chose to do what whatever they chose to do in  
 6 this area. There was never anything where there was an  
 7 agreement with us about what they would or wouldn't do.  
 8 Q. My question, sir, isn't it true that Intel made you  
 9 a commitment that they would drop JMF and other Java work  
 10 except to the extent they had preexisting commitments to  
 11 companies?  
 12 A. No.  
 13 MR. DOUGLAS: And same objections.  
 14 Q. (BY MR. HOSIE) Do you recall talking with  
 15 Gelsinger about that kind of commitment, sir?  
 16 A. No. You can use the word "commitment" in many  
 17 different ways.  
 18 Q. Well, let me rephrase that. Do you see the word  
 19 "commitment" in Mr. Rudder's mail to you?  
 20 A. I do.  
 21 Q. And he uses it in quotes, does he not?  
 22 A. Right.  
 23 Q. Okay. And he says, "I know you talked about this  
 24 with Gelsinger." Correct?  
 25 A. I think "this" refers to the general question of

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1 Q. (BY MR. HOSIE) As has Microsoft from time to time?  
 2 A. Absolutely. I can give you more examples of that.  
 3 Q. Do you think a rational economic company would  
 4 ignore threats from Microsoft?  
 5 MR. DOUGLAS: Objection to the form. Foundation.  
 6 A. I'm not sure how to respond to a hypothetical. If  
 7 you have a specific set of facts, I'll be glad to comment on  
 8 it.  
 9 (Deposition Exhibit No. 23 was marked  
 10 for identification.)  
 11 Q. (BY MR. HOSIE) Let me show you what's been marked  
 12 as Exhibit 23. Sir, Exhibit 23 is another e-mail string.  
 13 I'm only going to ask you about the first e-mail which is  
 14 referencing the same InfoWorld article.  
 15 A. Okay.  
 16 Q. Who is Eric Engstrom?  
 17 A. He worked in a group at Microsoft.  
 18 Q. Did you know him?  
 19 A. Yes.  
 20 Q. This e-mail reports that Eric Engstrom has done a  
 21 deal with Intel. Were you aware that Eric Engstrom had done  
 22 a deal with Intel?  
 23 MR. DOUGLAS: Objection. Form and foundation. The  
 24 witness didn't even receive a copy of this.  
 25 A. I know that at one time there was discussion around

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1 an MOU with Intel. And I don't think we ever reached a deal,  
 2 but I know there was some draft discussion about some  
 3 graphics-related work.

4 Q. (BY MR. HOSIE) Sir, he goes on to say, "Eric  
 5 Engstrom has done a deal with them and we agreed that they  
 6 could complete the work they are already doing."

7 Does that refresh your recollection about the  
 8 commitment that Intel made you?

9 MR. DOUGLAS: Same objections.

10 A. Intel did not make a commitment to stop doing  
 11 something, not that I was party to or involved with. It  
 12 points out, apparently when this InfoWorld thing came out, I  
 13 said it wasn't a big deal.

14 Q. (BY MR. HOSIE) And that's because you knew that  
 15 Intel had agreed not to do an NC and had agreed to basically  
 16 drop its support for Java, specifically Java Media Framework;  
 17 correct?

18 MR. DOUGLAS: Objection. Form and foundation.

19 A. That's -- this is where Intel's actually shipping  
 20 Java Media Framework, so I think you're a little confused.  
 21 So this is actually putting it into the marketplace.

22 Q. (BY MR. HOSIE) Right. And that act prompts this  
 23 e-mail string where people at Microsoft said, wait a second,  
 24 we have a deal, and then others say no, no, the deal allowed  
 25 them to finish preexisting commitments.

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1 And it's that very deal, Mr. Gates, that you deny,  
 2 is that not true, sir?

3 MR. DOUGLAS: Objection to form and foundation.  
 4 A. You're mischaracterizing this e-mail.  
 5 (Deposition Exhibit No. 24 was marked  
 6 for identification.)

7 Q. (BY MR. HOSIE) Let me show you Exhibit 24. This  
 8 is another e-mail dated December 1, 1997. I'm going to ask  
 9 only about the e-mail on the top from Russell Barck of Intel  
 10 to Marshall Brumer of Microsoft. Mr. Barck says, "Marshall,  
 11 my understanding of the original agreement was that we would  
 12 stop new evangelism efforts, but would continue to support  
 13 existing customer commitments. As far as I can tell, this is  
 14 one of them," referring to the same InfoWorld article;  
 15 correct?

16 MR. DOUGLAS: Objection to the form and foundation.  
 17 He didn't receive the document.

18 A. I'm not copied on this.

19 Q. (BY MR. HOSIE) Wasn't that the deal, sir?

20 A. No.

21 MR. DOUGLAS: Same objection. No foundation.

22 MR. HOSIE: I'd like to take a brief break off the  
 23 record, if we might.

24 MR. BURT: Where are we on time?

25 VIDEO OPERATOR: The time is 4:17 p.m. We'll be

1 taking a break in testimony.

2 (Recess taken.)

3 (Deposition Exhibit No. 25 was marked  
 4 for identification.)

5 VIDEO OPERATOR: The time is 4:23 p.m. We're now  
 6 back on the record.

7 Q. (BY MR. HOSIE) Mr. Gates, we took a break. With  
 8 the benefit of that break, is there any aspect of your  
 9 testimony earlier this afternoon you'd like to change, modify  
 10 or otherwise amend?

11 A. No.

12 Q. I've marked as our next in order Exhibit No. 25.

13 It's an e-mail thread again. I'm going to be focusing on a  
 14 e-mail from Bob Herbold to you, amongst many others, dated  
 15 February 15, 1998.

16 A. Right.

17 Q. And in it Mr. Herbold is recounting a conference  
 18 call that he had with Dennis Carter, VP of Marketing of  
 19 Intel, and Russ Barck of Intel, is he not, sir?

20 A. Right. Those are marketing people.

21 Q. Right. Halfway down the page there's a paragraph  
 22 with the heading Java. Do you see that?

23 A. Uh-huh.

24 Q. And this says that, "Charles Fitzgerald" -- he was  
 25 a Microsoft guy?

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1 A. Exactly.

2 Q. -- is talking with Barbara Dawson of Intel."

3 A. It says of Intel there.

4 Q. Do you know Barbara?

5 A. No.

6 Q. -- Barbara Dawson of Intel on almost daily basis  
 7 and we seem to have good agreement here. As long as we're  
 8 talking 'native' with respect to Java, both parties are  
 9 happy. Dennis reiterated once again that the Java Media  
 10 Framework activity between Sun and Intel is very, very low  
 11 priority and they expect it to die a natural death."

12 Do you recall learning in February 1998 that Intel  
 13 had communicated to Microsoft that Intel was letting JMF die?

14 MR. DOUGLAS: Objection to the form and foundation.

15 A. It says they expect it to die.

16 Q. (BY MR. HOSIE) A natural death. Did you recall  
 17 learning that, sir?

18 A. I don't recall the specific e-mail, no.

19 Q. Do you recall learning the fact that as of  
 20 February, Intel had assured Microsoft that Intel was letting  
 21 JMF die a natural death?

22 MR. DOUGLAS: Same objection.

23 A. I don't see that here.

24 Q. (BY MR. HOSIE) My question, sir. Do you recall  
 25 hearing at or about the time of this e-mail that Intel had

35 (Pages 134 to 137)

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<p style="text-align: right;">Page 138</p> <p>1 assured Microsoft that Intel had made its JMF work a very, 2 very low priority?</p> <p>3 MR. DOUGLAS: Objection. Form and foundation.</p> <p>4 A. There's nothing in here about assurance. It says 5 they expect it to die a natural death. And then the next 6 sentence says, "There was general agreement that Netscape's 7 disinvestment in Java certainly puts Java at the crossroads."</p> <p>8 And so apparently something Netscape is doing is 9 causing certain Java things to be less popular.</p> <p>10 Q. (BY MR. HOSIE) Well, here's a question I have, 11 Mr. Gates. Why is Intel sharing this kind of confidential 12 business information with Microsoft anyway?</p> <p>13 MR. DOUGLAS: Objection. Form, foundation, and 14 you're asking him to speculate.</p> <p>15 A. What do you mean confidential business information? 16 I mean, certainly we shared each other's secret product plans 17 with each other under non-disclosure on a very regular basis.</p> <p>18 Q. (BY MR. HOSIE) Technical engineering information 19 under NDA?</p> <p>20 A. Among other things.</p> <p>21 Q. Right. But is it your experience in business that 22 it's normal for companies to share their confidential 23 business plans with other companies?</p> <p>24 MR. DOUGLAS: Objection to the form and foundation.</p> <p>25 A. Some business plans are shared.</p>	<p style="text-align: right;">Page 140</p> <p>1 being the best OS to run Java client applications, clearly 2 talking about the fact there will be a lot of Java client 3 applications.</p> <p>4 Q. And why did that scare the hell out of you, 5 Mr. Gates?</p> <p>6 A. Well, whatever the new popular class of 7 applications are, we need to make sure our operating system 8 is providing the most value to those. And since there was a 9 trend at this time — later, you know, many aspects of Java 10 didn't pan out to be as popular as we and others thought they 11 would, but at this time it looked like there would be a lot 12 of Java client applications code, and we wanted to make sure 13 our OS ran it best and we wanted to move very quickly to do 14 that.</p> <p>15 Q. You mentioned several times today a continuum or a 16 spectrum of devices.</p> <p>17 A. Right.</p> <p>18 Q. Isn't it true, sir, that you personally believed 19 that it was essential that all the devices across that 20 spectrum rely on a single set of APIs and that those be 21 Microsoft APIs?</p> <p>22 MR. DOUGLAS: Objection to the form and foundation.</p> <p>23 A. No, the world has always been heterogeneous, that 24 is, there have been machines from Apple, set top boxes, phones. There never has been or will there ever be complete</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. (BY MR. HOSIE) And some are not?</p> <p>2 A. And some are not.</p> <p>3 (Deposition Exhibit No. 26 was marked 4 for identification.)</p> <p>5 Q. (BY MR. HOSIE) Let me show you what's been marked 6 as Exhibit 26, sir. Not to catch you off guard, Mr. Gates, 7 not that I think I could, but we're turning the clock back in 8 time earlier to September 1996 with this e-mail. I'm going 9 to be asking you about your e-mail in the middle of the page 10 to Aaron Contorer.</p> <p>11 A. Right.</p> <p>12 Q. What's the subject of your e-mail, sir?</p> <p>13 A. It's a forward of a mail — I guess -- well, 14 there's a long chain here and the subject line gets changed 15 during the chain. One of them is Think Week.</p> <p>16 Q. Who is Adam Bosworth?</p> <p>17 A. He was a product management type person.</p> <p>18 Q. He's writing here about Java to you in the mail to 19 which you immediately respond?</p> <p>20 A. His view of Java in 1996, that's right.</p> <p>21 Q. And you say, "This scares the hell out of me."</p> <p>22 Correct?</p> <p>23 A. Yeah, I say that -- it's not so much about Java, 24 it's about what will our OS offer the Java client 25 applications, that is, how will we distinguish ourselves as</p>	<p style="text-align: right;">Page 141</p> <p>1 uniformity of devices. 2 (Deposition Exhibit No. 27 was marked 3 for identification.)</p> <p>4 Q. (BY MR. HOSIE) I'd like to show you Exhibit 27. 5 These are Judge Jackson's Findings of Facts, sir. I'm going 6 to point you to one in specific, it's on Page 23, and it's 7 Finding 112. If you could turn there, please, Mr. Gates. 8 It's Page 23, Finding 112.</p> <p>9 A. Okay, go ahead.</p> <p>10 Q. This finding says, "At the end of May 1997, Gates 11 told a group of Microsoft executives that multimedia 12 streaming represented strategic ground that Microsoft needed 13 to capture."</p> <p>14 Is that true, sir? Did you do that?</p> <p>15 A. I know that at about this time we talked about 16 being one of the companies that offered multimedia streaming 17 capabilities and we did invest in creating a product that 18 competed in that area. We were one of many companies who 19 offered products in that area.</p> <p>20 Q. And why did you feel multimedia streaming 21 represented strategic ground that you needed to capture?</p> <p>22 A. What I said is that we -- I don't know anything 23 about strategic ground. We created a product to compete in 24 that space. We actually overestimated the revenue potential 25 out of that space.</p>

36 (Pages 138 to 141)

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1 Q. We've been talking hitherto today about the  
 2 platform challenge represented by NC and Java runtime  
 3 environments.  
 4 Isn't it true, sir, that by 1997 you were concerned  
 5 about another kind of platform challenge, specifically that  
 6 arising out of multimedia delivery and playback?  
 7 MR. DOUGLAS: Objection to the form. Vague and  
 8 overbroad.  
 9 A. No.  
 10 Q. (BY MR. HOSIE) You don't recall believing that you  
 11 were in a platform battle with RealNetworks in 1997?  
 12 A. We were competing with Real but they didn't offer a  
 13 complete operating system, no.  
 14 Q. You weren't concerned that if Real won the  
 15 multimedia format war that it would have the exclusive  
 16 product for multimedia playback and delivery?  
 17 MR. DOUGLAS: Objection to the form. Vague and  
 18 ambiguous and no foundation.  
 19 A. You're saying if they had 100 percent share would  
 20 they have 100 percent share?  
 21 Q. (BY MR. HOSIE) No, if they won the format battle.  
 22 Let me start by asking you, do you recall that you were in a  
 23 format battle with RealNetworks?  
 24 MR. DOUGLAS: Same objection. Form, foundation,  
 25 vague and ambiguous.

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1 A. There are many aspects to our competition with  
 2 RealNetworks. They support their own formats, they support  
 3 our formats, they support industry standard formats. We -  
 4 the actual revenue competition is for software  
 5 implementations, but one of the features of those software  
 6 implementations is different video formats that we support.  
 7 And we certainly invented new video formats that we  
 8 positioned as solving problems for customers.  
 9 (Deposition Exhibit No. 28 was marked  
 10 for identification.)  
 11 Q. (BY MR. HOSIE) Sir, I've marked as Exhibit 28 an  
 12 e-mail with the subject line of "Review with BillG on  
 13 2/26/99," and attached to that is a presentation deck that  
 14 has the title Windows Media Technologies, BillG Review,  
 15 2/26/99.  
 16 Do you recall participating in a Windows Media  
 17 Technologies Review in late February 1999, sir?  
 18 A. Not in particular, but it appears that I did.  
 19 Q. And along with Steve Ballmer and Paul Maritz?  
 20 A. Where do you see that they participated?  
 21 Q. First line of the e-mail.  
 22 A. Yep, the e-mail recounts that SteveB and PaulMa  
 23 were there.  
 24 Q. Senior guys?  
 25 A. Very senior.

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1 Q. Extremely. As of course were and are you?  
 2 A. I try. Every year I get more senior.  
 3 MR. HOSIE: As do we all.  
 4 MR. DOUGLAS: And we're also getting to three hours  
 5 so we need to wrap this up.  
 6 Q. (BY MR. HOSIE) Do you recall this review, sir?  
 7 A. Not in particular, but it appears I attended a  
 8 review.  
 9 Q. If you could turn to the presentation deck. A  
 10 presentation deck is internal Microsoft vernacular for  
 11 PowerPoint slides?  
 12 A. Well, we just called them PowerPoint slides. I  
 13 mean, it's actually our trademark so I think we love calling  
 14 it PowerPoint slides.  
 15 Q. And these are PowerPoint slides, are they not, sir?  
 16 A. Absolutely. They appear to be PowerPoint slides  
 17 that at least the mail suggests these were slides presented  
 18 at some kind of product review.  
 19 Q. If you could turn to the page that has 5 in the  
 20 lower right. The title is Platform Battle is Similar to  
 21 Netscape, But Different Playbook. Are you there?  
 22 A. I don't know where you are. Oh, gosh, I turned  
 23 right to it.  
 24 Q. Serendipity. Or was that just purely  
 25 perspicacious?

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1 MR. DOUGLAS: Do we have a question?  
 2 MR. HOSIE: We are building to a question, slowly  
 3 but relentlessly.  
 4 Q. (BY MR. HOSIE) Sir, the title is Platform Battle  
 5 is Similar to Netscape, But Different Playbook.  
 6 Did you personally view the platform battle with  
 7 Real as being similar to the browser battle?  
 8 A. No.  
 9 Q. So this is a statement that you would disagree  
 10 with?  
 11 A. This is a group presenting the work they're doing  
 12 as being as important as something else, and that's very  
 13 typical inside Microsoft.  
 14 Q. The next page, What It Means to Lose.  
 15 A. Probably more of the same. Let's take a look.  
 16 Q. Let's take a look. And you can tell me what you  
 17 agree with and what you disagree with. What it Means to  
 18 Lose. You would read that as what it means to lose the  
 19 multimedia platform battle?  
 20 A. No, I'm not sure. I'm not sure if this is about  
 21 formats or servers or clients.  
 22 Q. Or all of the above?  
 23 A. No, I don't think it's about all of the above.  
 24 MR. DOUGLAS: Do we have a substantive question?  
 25 Because we are past three hours.

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1 Q. (BY MR. HOSIE) What It Means to Lose. The first  
 2 consequence of losing is identified as, "Real, Apple and MP3  
 3 phenomenon provide the required multimedia runtime on Windows  
 4 and WinCE."

5 Do you see that, sir?

6 A. I don't think that's a consequence of losing, is  
 7 it?

8 Q. Well, what does that language mean to you, sir?

9 A. It's a point on the PowerPoint slide.

10 Q. Well, what does it mean to you, sir? You were at  
 11 this presentation, it's got your name, 2/26/99, BillG Review  
 12 on the bottom left. You sat through this --

13 A. It's a good thing for people to provide popular  
 14 multimedia software on Windows. So when it says Real, Apple  
 15 and MP3 provide multimedia runtime on Windows, as opposed to  
 16 them not providing it on Windows, that's a good thing.

17 Q. But if they own the proprietary standard, that  
 18 means that effectively they're going to control those APIs?

19 MR. DOUGLAS: Objection to the form.

20 A. Their work is proprietary to them, our work is  
 21 proprietary to us. There's no distinction there. The  
 22 relative popularity of their software would be useful to  
 23 them, the relative popularity of ours would be helpful to us.  
 24 But this is just about the media piece, it's not about  
 25 operating systems.

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1 that's going to be what the content's encoded in; correct?  
 2 A. No, because you have so many tradeoffs. I mean,  
 3 it's so trivial to download a Codec and you have so many  
 4 tradeoffs in terms of computation power, network bandwidths,  
 5 screen resolution that there's more and more Codecs all the  
 6 time. As time has gone on, the variety of multimedia formats  
 7 has simply increased, and so no single format has any  
 8 particular overriding position relative to the other formats.

9 Q. This presentation slide says at the very end of  
 10 this page, "Real's player becomes the browser of choice."

11 That's one consequence of losing the multimedia  
 12 platform battle; correct?

13 MR. DOUGLAS: Objection to form and foundation.

14 A. No, this is talking about multimedia. What they're  
 15 saying is that Real's -- when people wanted to view  
 16 multimedia, if Real is super successful then they'd be using  
 17 Real's software to view multimedia.

18 MR. DOUGLAS: What is the time?

19 VIDEO OPERATOR: One moment, please. Elapsed time  
 20 is three hours and five minutes, sir.

21 MR. DOUGLAS: Mr. Hosie, now I think if you have  
 22 any questions that relate to document retention, we have to  
 23 move to those.

24 MR. HOSIE: Well, I guess I'll continue on this  
 25 until you tell me to stop.

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1 Q. (BY MR. HOSIE) I understand. Weren't you  
 2 concerned, though, that if -- well, strike that, let me ask a  
 3 different question.

4 In 1997, you personally believed that multimedia  
 5 was going to become an increasingly important part of the PC  
 6 experience going forward; fair?

7 MR. DOUGLAS: Objection to the form.

8 A. We thought that people because of the increased  
 9 bandwidth and the software improvements that we and other  
 10 people were making, would spend more time doing multimedia.

11 Q. (BY MR. HOSIE) Okay. And you were concerned that  
 12 Microsoft not get locked out of that space, if you will, by  
 13 having Real's proprietary format become the de facto  
 14 standard; also fair?

15 MR. DOUGLAS: Objection to the form.

16 A. Well, there's many different formats. You're never  
 17 going to have a case where one format is totally popular,  
 18 because it's trivial on a PC to have Codecs for any number of  
 19 formats. In fact, today on a PC, I think you have Codecs  
 20 typically for 20 or 30 formats. So you're not going to have  
 21 one format eliminating the other formats.

22 Q. (BY MR. HOSIE) Content will be encoded in  
 23 particular formats; correct?

24 A. Many different formats.

25 Q. But if one format becomes the de facto standard,

1 MR. DOUGLAS: I think I just did.

2 MR. HOSIE: And you did it very graciously, Chuck.

3 MR. DOUGLAS: Well, I think you told the judge  
 4 you'd be three hours and we let you continue on.

5 MR. HOSIE: Well, we won't quarrel right now, but I  
 6 respect your request and I'll move on in the middle of the  
 7 document.

8 Q. (BY MR. HOSIE) Mr. Gates, I bet you don't know a  
 9 lot about Microsoft's e-mail retention policies and  
 10 practices?

11 MR. DOUGLAS: Objection to the form.

12 A. That's a very vague question, sir.

13 Q. (BY MR. HOSIE) Okay, well, let me be more  
 14 specific. Do you recall attending a meeting at Intel in 1995  
 15 where you reported in substance that this antitrust thing  
 16 will blow over but we may change our e-mail retention?

17 MR. DOUGLAS: Objection. Form and foundation.

18 A. You're talking about nine years ago?

19 Q. (BY MR. HOSIE) Yes.

20 A. I don't remember a specific meeting where that  
 21 happened.

22 Q. Do you remember ever saying that at an Intel  
 23 meeting, that this antitrust thing will blow over but you all  
 24 might have to change e-mail retention policies at Microsoft?

25 A. No.

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1 Q. All right, sir. In 1997, Microsoft promulgated a  
 2 policy that e-mails should not be saved to servers subject to  
 3 backup. Not to servers but servers subject to backup.

4 Do you know anything about that policy?

5 MR. DOUGLAS: Objection. Form and foundation. I  
 6 think it mischaracterizes -

7 A. I'm very confused about what you're saying.

8 MR. DOUGLAS: Hold on, Mr. Gates. Objection to the  
 9 foundation as well because it mischaracterizes the company  
 10 policy.

11 Q. (BY MR. HOSIE) Sir, do you recall that at some  
 12 point Microsoft promulgated a policy that e-mails should not  
 13 be saved to servers subject to backup?

14 MR. DOUGLAS: Same objection.

15 A. I think you're going to have to explain better what  
 16 you're talking about. That doesn't - I can't parse that.

17 Are you talking about mail servers?

18 Q. (BY MR. HOSIE) No, not the Exchange servers, just  
 19 your file servers.

20 A. But Exchange servers are mail servers, right?

21 Q. Yes.

22 A. Okay, and that -

23 Q. And you also have file servers in addition to  
 24 Exchange servers; correct?

25 A. Yeah. Those are among the many, many types of

1 saving e-mail to servers but only those servers subject to  
 2 backup?

3 MR. DOUGLAS: Objection. Plus it's overbroad and  
 4 vague.

5 A. Again, what you're saying doesn't parse.

6 Q. (BY MR. HOSIE) Doesn't make sense to you?

7 A. No. What you're saying just doesn't make sense.  
 8 Look, if you want to go through the different kinds of  
 9 servers and the policies you can tell me things and I'll say,  
 10 hey, I'm not aware of the policies. But what you're saying  
 11 is just - the sentence doesn't make sense.

12 Q. Why? What's confusing you about it?

13 A. Because you've got to talk about different servers.  
 14 Mail servers is where most of the mail is.

15 Q. Right. And there are file servers to which people  
 16 have assigned shares; correct?

17 A. File shares.

18 Q. Yes. And people can archive with a dot PST prefix,  
 19 archive e-mail to those file shares; correct?

20 A. I'm not - technologically, yes. I don't think  
 21 many people do that, I don't know why they would. But yes,  
 22 technologically one could do that.

23 Q. And for those dot PST archived files, are you aware  
 24 of a policy at Microsoft that said thou shalt not do that to  
 25 servers subject to backup?

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1 servers we have.

2 Q. And are you aware that your e-mail Exchange servers  
 3 are -- the backup tapes are written over every 28 days?

4 MR. DOUGLAS: Same objection. Form and foundation.

5 A. I don't know.

6 Q. (BY MR. HOSIE) Are you aware of a policy at  
 7 Microsoft that says do not save your e-mails to file servers  
 8 subject to backup?

9 MR. DOUGLAS: Same objection.

10 A. I'm not sure, because mail's on your mail server.

11 Q. (BY MR. HOSIE) Can't people archive in a PST file  
 12 on a file server, sir?

13 A. On a file server?

14 Q. Yes.

15 A. I don't think many people do that.

16 Q. Well, haven't you personally done that from time to  
 17 time, sir?

18 A. No.

19 Q. Do you recall asking your TA in 1997 or '98, Aaron  
 20 Conotor, to recall some backup tapes of e-mail and delete  
 21 some e-mails from them?

22 MR. DOUGLAS: Same objection. Form and foundation.

23 A. No.

24 Q. (BY MR. HOSIE) All right, sir. But going back to  
 25 my root question, you know nothing about the policy of not

1 MR. DOUGLAS: Objection. Form and foundation.

2 A. I don't know what you mean subject to backup.

3 Q. (BY MR. HOSIE) Ah. Backup retention?

4 A. I don't know what you mean. You're saying that -  
 5 I mean, the fact is, I don't know anything about this whole  
 6 area. But I don't even - you're not even getting to the  
 7 point where I can say I don't know what the policy is.

8 Are you talking about that people don't do it or -  
 9 what are you saying? You're saying they don't do it?

10 Q. No, Mr. Gates, people in fact did archive e-mails  
 11 in dot PST files even though there was a policy saying don't  
 12 do it to servers subject to document retention backup via  
 13 tape.

14 And my question is, do you know about that policy?

15 MR. DOUGLAS: Objection. Form and foundation.

16 A. I think you're mixing together backup and  
 17 archiving, but -

18 Q. (BY MR. HOSIE) Well, on this one, sir, we can take  
 19 all the time it takes, so let me go slowly and carefully.

20 A. Okay.

21 Q. Microsoft has Exchange servers for its e-mail;  
 22 correct?

23 A. Those are our mail servers, yes.

24 Q. Are those e-mail servers backed up?

25 A. Under some policy, yes.

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1 Q. Are you aware that the backup tapes are erased  
 2 every 28 days?  
 3 A. No, but I'm not surprised.  
 4 Q. Why does that not surprise you?  
 5 A. If you accidentally delete e-mail, that gives you  
 6 plenty of time to remember that you did.  
 7 Q. What is Microsoft's policy on e-mail retention,  
 8 please?  
 9 MR. DOUGLAS: Objection. Form and foundation.  
 10 A. People keep whatever there's a business requirement  
 11 for or a legal requirement for past some date.  
 12 Q. (BY MR. HOSIE) How -- and what is that date? Is  
 13 it one month, six months, a year, do you know?  
 14 MR. DOUGLAS: Same objection.  
 15 A. I'm not sure.  
 16 Q. (BY MR. HOSIE) Now, are you aware that people at  
 17 Microsoft have in fact saved under a dot PST prefix e-mails  
 18 to file servers?  
 19 MR. DOUGLAS: Same objection.  
 20 A. No, but I know it's technologically possible.  
 21 Q. (BY MR. HOSIE) And do you know anything about a  
 22 policy that directs Microsoft employees not to save mail on  
 23 servers subject to backup?  
 24 A. No.  
 25 Q. In 1997, Microsoft's internal policy guidelines

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1 A. He's in the management chain but it's not his  
 2 specific responsibility.  
 3 Q. (BY MR. HOSIE) Do you have any explanation for why  
 4 Mr. Allchin was telling Windows division employees not to be  
 5 foolish and not to archive e-mail in January of 2000?  
 6 MR. DOUGLAS: Objection. Form and foundation.  
 7 A. It appears somebody kept so much e-mail that it got  
 8 corrupted, and it's not clear who that's from. And then  
 9 Brian appears to say -- I've never seen this before -- hey,  
 10 if you keep that much your e-mail box is going to get big and  
 11 unreliable. And then Jim talks about his view.  
 12 Q. (BY MR. HOSIE) And Mr. Allchin says that it was  
 13 company policy to purge e-mail after 30 days. Was that the  
 14 company's policy?  
 15 MR. DOUGLAS: Objection to form and foundation --  
 16 A. I'd have to check.  
 17 MR. DOUGLAS: -- mischaracterizes the document.  
 18 A. Certainly the policy always said that you retain  
 19 things that there's a business reason to keep or a legal  
 20 reason to keep. And, you know, those things we keep  
 21 indefinitely.  
 22 Q. (BY MR. HOSIE) A business reason to keep?  
 23 A. Or a legal reason.  
 24 Q. And by business reason what do you mean?  
 25 A. Things that you want to keep around.

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1 said that that policy was due to legal reasons. Do you know  
 2 anything about the legal reasons underlying that policy?  
 3 MR. DOUGLAS: Form and foundation.  
 4 A. Yeah, I don't have a foundation for that.  
 5 Q. (BY MR. HOSIE) Fair enough. And if you don't  
 6 know, Mr. Gates, say I don't know.  
 7 A. I don't have a foundation for the whole sentence.  
 8 Q. Fair enough. And, sir, are you aware that at some  
 9 point Microsoft programmed its backup system to delete  
 10 e-mails that had been archived?  
 11 MR. DOUGLAS: Objection. Form and foundation.  
 12 A. No.  
 13 Q. (BY MR. HOSIE) Who sets e-mail retention policy at  
 14 Microsoft?  
 15 A. Some combination of business people and legal  
 16 people and technical people.  
 17 (Deposition Exhibit No. 29 was marked  
 18 for identification.)  
 19 Q. (BY MR. HOSIE) I'd like to show you what's been  
 20 marked as Exhibit 29, sir.  
 21 A. (Witness reading document.) Okay. I'm not copied  
 22 on this.  
 23 Q. To your understanding, was it one of Mr. Allchin's  
 24 job responsibilities to police Microsoft's e-mail policies?  
 25 MR. DOUGLAS: Objection to the form.

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1 Q. Things that might be important for future  
 2 reference, that kind of thing?  
 3 A. Right.  
 4 Q. And is Mr. Allchin's e-mail consistent with your  
 5 understanding of that policy?  
 6 MR. DOUGLAS: Objection. Form and foundation, it's  
 7 overbroad.  
 8 A. I haven't spoken with Jim about this. I think  
 9 common sense says that this is about the e-mail that you  
 10 don't need longer for the business or legal requirements.  
 11 But unless you put that in there, he's misstating our policy.  
 12 Q. (BY MR. HOSIE) Where would you go to check what --  
 13 you said I'd have to go check what the policy is. Where  
 14 would you go to do that?  
 15 A. The employee handbook.  
 16 Q. What's the employee handbook?  
 17 A. It's an online document.  
 18 Q. And it has, amongst other things, document  
 19 retention policies?  
 20 A. I think if you did a search on that page you'd  
 21 eventually find something.  
 22 Q. That's a handbook that's readily available to all  
 23 Microsoft employees online here?  
 24 A. Yeah, I believe you can search online. I haven't  
 25 done this. My e-mail is retained on a regular monthly basis,

40 (Pages 154 to 157)

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1 which is why, you know, I don't go looking up at the general  
 2 online policy. Mine gets archived every month.

3 Q. This employee handbook, I mean, what, there are  
 4 55,000 or so Microsoft employees now?

5 A. Around that, yes.

6 Q. And any one of them could theoretically get online  
 7 and read the --

8 A. Well, we should check to make sure. That's my  
 9 belief, my guess, though, because I haven't gone and actually  
 10 checked that. I know my mail is handled -- it's archived  
 11 every month.

12 Q. Well, let's talk about your mail, then. When did  
 13 that begin, the policy and practice of keeping every single  
 14 Bill Gates mail?

15 MR. DOUGLAS: Objection to the form.

16 A. A long, long time ago when there was some type of  
 17 ongoing criteria that, you know, ongoing mail would be within  
 18 the scope of some request. Many, over five years ago, we can  
 19 find out exactly when, but it was when requests came in that  
 20 had an ongoing nature.

21 Q. (BY MR. HOSIE) And mechanically how does the  
 22 preservation of your mail work, if you know?

23 A. It goes to legal on a monthly basis.

24 Q. So somebody from legal comes up and basically takes  
 25 a dump from your mail archive?

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1 A. I think my assistant does the dump and then she --  
 2 after she gets rid of personal e-mails, sends it over to  
 3 legal. I'm not even sure it's a dump. Somehow, I don't know  
 4 the technical approach that's used, but the file is sent to  
 5 legal on a monthly basis.

6 Q. And is that a copy of the file or the original? I  
 7 mean, do you maintain a separate copy yourself?

8 A. Well, there's the active copy.

9 Q. One moment, please.

10 Sir, if you wanted to find e-mails from, say,  
 11 October of 1997, what would you do?

12 MR. DOUGLAS: Objection to the form. It's  
 13 overbroad.

14 A. My e-mails?

15 Q. (BY MR. HOSIE) Sure.

16 A. I'd go to legal.

17 Q. Because they keep the complete historical set of  
 18 Gates e-mails?

19 A. That's my understanding. I mean, that they -- you  
 20 know, subject -- the personal mail gets deleted by Christine,  
 21 but other than that, yes.

22 Q. And Christine is your executive assistant?

23 A. Yeah, she's the current one.

24 Q. Fair enough. Document retention notices. Do you  
 25 know what a document retention notice is, Mr. Gates?

1 (Deposition concluded at 4:54 p.m.)  
 2 (Signature reserved.)

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1 CORRECTION & SIGNATURE PAGE  
23 RE: BURST.COM, INC. Vs. MICROSOFT CORPORATION  
4 U.S. DISTRICT COURT, DISTRICT OF MARYLAND  
5 CIVIL ACTION NO. JPM-02-cv-2952  
6 DEPOSITION OF: BILL GATES; AUGUST 26, 2004  
7 Reported By: Diane M. Mills8 I, BILL GATES, have read the within transcript taken  
9 AUGUST 26, 2004, and the same is true and accurate except for  
10 any changes and/or corrections, if any, as follows:11 PAGE/LINE CORRECTION REASON  
12  
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19  
20  
21  
22  
23 Signed at \_\_\_\_\_, Washington,  
24 on this date: \_\_\_\_\_  
25

BILL GATES

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1 REPORTER'S CERTIFICATE  
23 I, DIANE M. MILLS, the undersigned Certified Court  
4 Reporter and Notary Public, do hereby certify:5 That the testimony and/or proceedings, a transcript of  
6 which is attached, was given before me at the time and place  
7 stated therein; that any and/or all witness(es) were by me  
8 duly sworn to tell the truth; that the sworn testimony and/or  
9 proceedings were by me stenographically recorded and  
10 transcribed under my supervision, to the best of my ability;  
11 that the foregoing transcript contains a full, true, and  
12 accurate record of all the sworn testimony and/or proceedings  
13 given and occurring at the time and place stated in the  
14 transcript; that I am in no way related to any party to the  
15 matter, nor to any counsel, nor do I have any financial  
16 interest in the event of the cause.17  
18 WITNESS MY HAND AND SEAL this 2nd day of September  
19 2004.  
20  
21  
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24 Certified Court Reporter  
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